UNITED STATES REPORTS

VOLUME 534

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2001

BEGINNING OF TERM

OCTOBER 1, 2001, THROUGH MARCH 1, 2002

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

RETIRED

BYRON R. WHITE, Associate Justice.

OFFICERS OF THE COURT

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THEODORE B. OLSON, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
PAMELA TALKIN, Marshal.*
SHELLEY L. DOWLING, Librarian.

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*Pamela Talkin was appointed Marshal effective July 16, 2001. She was presented to the Court on October 1, 2001. See *post*, pp. v, 801.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. V, and 512 U. S., p. V.)

PRESENTATION OF MARSHAL

SUPREME COURT OF THE UNITED STATES

MONDAY, OCTOBER 1, 2001

Present: CHIEF JUSTICE REHNQUIST, JUSTICE STEVENS, JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, and JUSTICE BREYER.

THE CHIEF JUSTICE said:

As we open today, I would like to welcome the new Marshal of the Court, Pamela Talkin. Marshal Talkin is the Tenth Marshal of the Court and the first woman to hold the position.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2001

UNITED STATES POSTAL SERVICE *v.* GREGORY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 00–758. Argued October 9, 2001—Decided November 13, 2001

While three disciplinary actions that petitioner Postal Service took against respondent were pending in grievance proceedings pursuant to the Postal Service's collective bargaining agreement with respondent's union, the Postal Service terminated respondent's employment after a fourth violation. The Civil Service Reform Act of 1978 (CSRA) permits covered employees, such as respondent, to appeal removals and other serious disciplinary actions to the Merit Systems Protection Board (Board) or through the negotiated grievance procedure, but not both. Respondent appealed to the Board, where an agency must prove its charge by a preponderance of the evidence, 5 U. S. C. § 7701(c)(1)(B), proving not only that the misconduct occurred, but also that the penalty assessed is reasonable in relation to it. An Administrative Law Judge (ALJ) concluded that respondent's termination was reasonable in light of her four violations. Although the three prior disciplinary actions were the subject of pending grievances, the ALJ analyzed them independently, under the approach set forth in *Bolling* v. *Department of Air Force*, 8 M. S. P. B. 658, and found that they were not clearly erroneous. While respondent's petition for review of the ALJ's decision was pending before the Board, an arbitrator overturned the first disciplinary action. Respondent did not inform the Board, which denied her petition. The Federal Circuit vacated in part and remanded, holding that prior disciplinary actions subject to ongoing proceedings may not be used to support a penalty's reasonableness.

Syllabus

Held:

1. The Board may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions. The Federal Circuit reviews a Board decision's substance under the extremely narrow arbitrary and capricious standard, which allows the Board wide latitude in fulfilling its obligation to review agency disciplinary actions. The role of judicial review is only to ascertain if the Board has met the CSRA's minimum standards. There is nothing arbitrary about the Board's decision to independently review prior violations. Neither the Federal Circuit nor respondent has suggested that the Board has applied its policy inconsistently or that it lacks reasons for its approach. Nor is independent Board review contrary to any law. The Federal Circuit's reference to *Douglas* v. *Veterans Admin.*, 5 M. S. P. B. 313, which sets out the framework for reviewing disciplinary actions, is a way of describing the Board's review process, not, as respondent suggests, an indication that the Board violated § 7701(c)(1)(B). More important, any suggestion that independent review by the Board violates that section's preponderance of the evidence standard would be incorrect. The Board has its own mechanism for allowing agencies to meet their statutory burden of justifying all violations supporting a penalty. Insofar as *Bolling* review is adequate, an agency may meet its burden by prevailing either in grievance or before the Board. Independent review also does not violate the CSRA's general statutory scheme, which allows Board review of serious, but not minor, disciplinary actions. Where a termination is based on a series of disciplinary actions, some of which are minor, the Board's authority to review the termination must also include the authority to review each of the prior disciplinary actions to establish the penalty's reasonableness. Any effects of such review on pending grievance procedures result from the CSRA's parallel review structures. If the Board's independent review procedure is adequate, the review that an employee receives is fair. Although that procedure's fairness is not before this Court, a presumption of regularity attaches to Government agencies' actions, and some deference to agency disciplinary actions is appropriate. Pp. 6–10.

2. Because the Board does not rely upon disciplinary actions that were overturned in grievance proceedings at the time of its review, a remand to the Federal Circuit is necessary to determine the effect that the reversal of one of respondent's disciplinary actions had on her termination. Pp. 10–11.

212 F. 3d 1296, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 11. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 14.

Gregory G. Garre argued the cause for petitioner. With him on the briefs were *Solicitor General Olson*, former *Acting Solicitor General Underwood*, *Acting Assistant Attorney General Schiffer*, *Deputy Solicitor General Clement*, *David M. Cohen*, *Todd M. Hughes*, *David B. Stinson*, *Mary Anne Gibbons*, *Lori J. Dym*, and *Stephan J. Boardman*.

Henk Brands argued the cause and filed a brief for respondent.*

JUSTICE O'CONNOR delivered the opinion of the Court.

The Civil Service Reform Act of 1978 allows eligible employees to appeal termination and other serious disciplinary actions to the Merit Systems Protection Board. 5 U. S. C. §§ 7512–7513. The Federal Circuit ruled that, when assessing the reasonableness of these actions, the Board may not consider prior disciplinary actions that are pending in collectively bargained grievance proceedings. 212 F. 3d 1296, 1298 (2000). Because the Board has broad discretion in determining how to review prior disciplinary actions and need not adopt the Federal Circuit's rule, we now vacate and remand for further proceedings.

I

Respondent Maria Gregory worked for petitioner United States Postal Service as a letter technician with responsibil-

*Briefs of *amici curiae* urging affirmance were filed for the American Federation of Government Employees, AFL–CIO, by *Mark D. Roth* and *Charles A. Hobbie;* for the National Association of Letter Carriers, AFL–CIO, by *Keith E. Secular;* for the National Employment Lawyers Association by *Edward H. Passman* and *Paula A. Brantner;* and for the National Treasury Employees Union by *Gregory O'Duden*, *Barbara A. Atkin*, and *Kerry L. Adams*.

ity for overseeing letter carriers on five mail routes, and serving as a replacement carrier on those routes. App. to Pet. for Cert. A–15. On April 7, 1997, respondent left work early to take her daughter to the doctor, ignoring her supervisor's instructions to sort the mail for her route before leaving. She received a letter of warning for insubordination. App. 47–48. Respondent filed a grievance under the procedure established in the collective bargaining agreement between her union and her employer, see generally 1998–2001 Agreement Between National Association of Letter Carriers, AFL–CIO and U. S. Postal Service, Art. 15. App. 43.

Later that same month respondent was cited for delaying the mail, after mail from another route was found in her truck at the end of the day. *Id.*, at 45–46. The Postal Service suspended her for seven days, and respondent filed a second grievance. *Id.*, at 41–42. In August 1997, respondent was again disciplined for various violations, including failing to deliver certified mail and attempting to receive unauthorized or unnecessary overtime. *Id.*, at 38–40. She received a 14-day suspension, and again filed a grievance.

While these three disciplinary actions were pending in grievance proceedings pursuant to the collective bargaining agreement, respondent was disciplined one final time. On September 13, 1997, respondent filed a form requesting assistance in completing her route or, alternatively, 3½ hours of overtime. Considering this request excessive, respondent's supervisor accompanied her on her route and determined that she had overestimated the necessary overtime by more than an hour. *Id.*, at 31–33. In light of this violation and respondent's previous violations, her supervisor recommended that she be removed from her employment at the Postal Service. *Ibid.* On November 17, 1997, the Postal Service ordered respondent's termination effective nine days later. *Id.*, at 24–29.

Because respondent previously served in the Army, she falls into the category of "preference eligible" Postal Service

employees covered by the Civil Service Reform Act of 1978 (CSRA). 5 U. S. C. § 7511(a)(1)(B)(ii). The CSRA provides covered employees the opportunity to appeal removals and other serious disciplinary actions to the Merit Systems Protection Board (Board). §§ 7512–7513. Under the CSRA, respondent could appeal her termination to the Board or seek relief through the negotiated grievance procedure, but could not do both. § 7121(e)(1). Respondent chose to appeal to the Board.

When an employing agency's disciplinary action is challenged before the Board, the agency bears the burden of proving its charge by a preponderance of the evidence. § 7701(c)(1)(B). Under the Board's settled procedures, this requires proving not only that the misconduct actually occurred, but also that the penalty assessed was reasonable in relation to it. *Douglas* v. *Veterans Admin.*, 5 M. S. P. B. 313, 333–334 (1981).

Following these guidelines, a Board Administrative Law Judge (ALJ) upheld respondent's termination, concluding that the Postal Service had shown that respondent overestimated her overtime beyond permissible limits on September 13, App. to Pet. for Cert. A–29, and that her termination was reasonable in light of this violation and her prior violations. *Id.*, at A–36 to A–40. Although the three prior disciplinary actions were the subject of pending grievances, the ALJ analyzed them independently, following the approach set forth in *Bolling* v. *Department of Air Force*, 8 M. S. P. B. 658 (1981). *Bolling* provides for *de novo* review of prior disciplinary actions unless: "(1) [the employee] was informed of the action in writing; (2) the action is a matter of record; and (3) [the employee] was given the opportunity to dispute the charges to a higher level than the authority that imposed the discipline." *Id.*, at 660–661. If these conditions are met, Board review of prior disciplinary action is limited to determining whether the action is clearly erroneous. *Id.*, at 660. After finding that respondent's three prior disciplinary ac-

tions met *Bolling*'s three conditions, the ALJ concluded that there was no clear evidence of error. App. to Pet. for Cert. A–37.

Respondent petitioned the Board for review of the ALJ's decision. While this appeal was pending, an arbitrator resolved respondent's first grievance (relating to the April 7 incident) in her favor, and ordered that the letter of warning be expunged. App. 3–16. Respondent did not advise the Board of that ruling. The Board then denied her request for review of the ALJ's determination. App. to Pet. for Cert. A–9 to A–10.

Respondent petitioned for review of the Board's decision in the United States Court of Appeals for the Federal Circuit. 5 U. S. C. § 7703(a). That court affirmed the Board's decision to uphold the ALJ's factual findings with respect to the September 13 incident. 212 F. 3d, at 1299. Taking judicial notice of the fact that one of the three disciplinary actions underlying respondent's termination had been overturned in arbitration, and noting that respondent's two remaining grievances were still pending, it reversed the Board's determination that the penalty was reasonable. *Ibid.* While recognizing that disciplinary history is an "important factor" in assessing any penalty, *id.*, at 1300, the Federal Circuit held that "prior disciplinary actions that are subject to ongoing proceedings may not be used to support" a penalty's reasonableness, *id.*, at 1298. It therefore vacated the Board's decision in part and remanded for further proceedings. *Id.*, at 1300. We granted certiorari, 531 U. S. 1143 (2001).

II

The Federal Circuit's statutory review of the substance of Board decisions is limited to determining whether they are unsupported by substantial evidence or are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U. S. C. § 7703(c). Like its counterpart in the Administrative Procedure Act, 5 U. S. C. § 706(2), the arbi-

trary and capricious standard is extremely narrow, *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U. S. 402, 416 (1971), and allows the Board wide latitude in fulfilling its obligation to review agency disciplinary actions. It is not for the Federal Circuit to substitute its own judgment for that of the Board. *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983). The role of judicial review is only to ascertain if the Board has met the minimum standards set forth in the statute. We conclude that the Board need not adopt the Federal Circuit's rule in order to meet these standards.

The Postal Service argues that the Board's independent review of prior disciplinary actions is sufficient to meet its statutory obligations. The adequacy of the Board's particular review mechanism—*Bolling* review, see *Bolling* v. *Department of Air Force*, *supra*—is not before us. The Federal Circuit said nothing about *Bolling*, instead adopting a sweeping rule that the Board may never rely on prior disciplinary actions subject to ongoing grievance procedures, regardless of the sort of independent review the Board provides. Respondent likewise asks this Court only to uphold the Federal Circuit's rule forbidding independent Board review. She does not seek a ruling requiring a different Board review mechanism, nor did she do so before the Federal Circuit. Her brief in that court mentioned neither *Bolling* nor its standard, arguing only that the Board should hold off its review altogether pending the outcome of collectively bargained grievance proceedings. Brief for Petitioner in No. 00–3123 (CA Fed.), p. 2. Moreover, even if the adequacy of *Bolling* review were before us, we lack sufficient briefing on its specific functioning in this case. We thus consider only whether the Board may permissibly review prior disciplinary actions subject to ongoing grievance procedures independently, not whether the particular way in which it does so meets the statutory standard.

There is certainly nothing arbitrary about the Board's decision to independently review prior disciplinary violations. Neither the Federal Circuit nor respondent has suggested that the Board has applied this policy inconsistently—indeed, the Board has taken this same approach for 19 years. See *Carr* v. *Department of Air Force*, 9 M. S. P. B. 714 (1982). Nor have they argued that the Board lacks reasons for its approach. Following the Federal Circuit's rule would require the Board either to wait until challenges to disciplinary actions pending in grievance proceedings are completed before rendering its decision, or to ignore altogether the violations being challenged in grievance in determining the reasonableness of the penalty. The former may cause undue delay. See Reply Brief for Petitioner 6–7. The latter would, in many cases, effectively preclude agencies from relying on an employee's disciplinary history, which the Federal Circuit itself acknowledged to be an "important factor" in any disciplinary decision. 212 F. 3d, at 1300.

Nor is independent review by the Board contrary to any law. The Federal Circuit cited no provision of the CSRA or any other statute to justify its new rule. *Id.*, at 1299–1300. At oral argument in this Court, respondent's counsel pointed to the Federal Circuit's statement that, if pending grievances were later overturned in arbitration, "the foundation of the Board's *Douglas* analysis would be compromised." Tr. of Oral Arg. 49; 212 F. 3d, at 1300 (citing *Douglas* v. *Veterans Admin.*, 5 M. S. P. B. 313 (1981)). The Board's *Douglas* decision set out a general framework for reviewing agency disciplinary actions. Because *Douglas* at one point specifically discussed 5 U. S. C. § 7701(c)(1)(B), the CSRA provision placing the burden of proof on the employing agency to justify its disciplinary action, counsel claimed, the Federal Circuit must have thought the Board's policy violates that section. Tr. of Oral Arg. 49. We do not read the Federal Circuit's citation of *Douglas* as an implicit reference to § 7701(c)(1)(B), particularly given that the Federal Circuit's opinion nowhere

mentions that section's standard. Rather, we interpret the Federal Circuit's reference to *Douglas* as a way of describing the entire process of Board review of disciplinary actions.

More importantly, any suggestion that the Board's decision to independently review prior disciplinary actions violates § 7701(c)(1)(B)'s preponderance of the evidence standard would be incorrect. To the extent that that standard places the burden upon employing agencies to justify all of the violations—including those dealt with in prior disciplinary actions—that are the basis for the penalty, the Board has its own mechanism for allowing agencies to meet that burden. Insofar as *Bolling* review is adequate to meet this burden of proof, an employing agency may meet its statutory burden to justify prior actions by prevailing either in grievance or before the Board.

Amicus National Treasury Employees Union (NTEU) argues that independent Board review of prior disciplinary actions pending in grievance violates the CSRA's general statutory scheme. Brief for National Treasury Employees Union as *Amicus Curiae* 8–12. Employees covered by the CSRA may elect Board review only for disciplinary actions of a certain seriousness, such as termination, suspension for more than 14 days, or a reduction in grade or pay. 5 U. S. C. §§ 7512–7513. For more minor actions, workers may only seek review through negotiated grievance procedures, if they exist. § 7121. According to NTEU, this scheme deprives the Board of the statutory authority to review minor disciplinary actions like the three that were pending in this case. It is true that the CSRA contemplates that at least some eligible employees (those represented by unions) will have two different forums for challenging disciplinary actions, depending in part on their seriousness. If the Board had attempted to review respondent's first disciplinary action before she was terminated, it would have exceeded its statutory authority. In this case, however, the Board was asked to review respondent's termination, something it

clearly has authority to do. §§ 7512–7513. Because this termination was based on a series of disciplinary actions, some of which are minor, the Board's authority to review the termination must also include the authority to review each of the prior disciplinary actions to establish the reasonableness of the penalty as a whole.

Independent Board review of disciplinary actions pending in grievance proceedings may at times result in the Board reaching a different conclusion than the arbitrator. It may also result in a terminated employee never reaching a resolution of her grievance at all, because some collective bargaining agreements require unions to withdraw grievances when an employee's termination becomes final before the Board. Brief for Respondent 10–11, 37; Reply Brief for Petitioner 14. Rather than being inconsistent with the statutory scheme, however, these possibilities are the result of the parallel structures of review set forth in the CSRA.

Such results are not necessarily unfair. Any employee who appeals a disciplinary action to the Board receives independent Board review. If the Board's mechanism for reviewing prior disciplinary actions is itself adequate, the review such an employee receives is fair. Although the fairness of the Board's own procedure is not before us, we note that a presumption of regularity attaches to the actions of Government agencies, *United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 14–15 (1926), and that some deference to agency disciplinary actions is appropriate.

III

Although the Board independently reviews prior disciplinary actions pending in grievance, it also has a policy of not relying upon disciplinary actions that have already been overturned in grievance proceedings at the time of Board review. See *Jones* v. *Department of Air Force*, 24 MSPR 429, 431 (1984). As one of respondent's disciplinary actions was overturned in arbitration before the Board rendered its

decision, the Postal Service concedes that a remand to the Federal Circuit is necessary to determine the effect of this reversal on respondent's termination. Reply Brief for Petitioner 15–16.

The judgment of the United States Court of Appeals for the Federal Circuit is therefore vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, concurring.

While I join the Court's opinion as far as it goes, it does not go far enough. The Court concludes that the adequacy of the mechanism the Merit Systems Protection Board used to review prior disciplinary actions pending in collectively bargained grievance proceedings (the so-called *Bolling* framework) is a question "not before us." *Ante*, at 7. I think it is.

The Federal Circuit below held that the Board, in assessing the reasonableness of petitioner's decision to terminate respondent, abused its discretion by relying upon prior disciplinary actions that were pending in collectively bargained grievance proceedings. 212 F. 3d 1296, 1300 (2000).

Petitioner now contests the Federal Circuit's holding by arguing that the Board's consideration of prior disciplinary actions subject to pending grievances does not constitute an abuse of discretion because the Board's use of the *Bolling* framework, see *Bolling* v. *Department of Air Force*, 8 M. S. P. B. 658 (1981), provides employees with more than adequate procedural safeguards.[1] Brief for Petitioner 27–28. Respondent, by contrast, counters that the *Bolling* framework not only is *insufficient* to prevent the "unfair-

[1] Petitioner's argument is certainly quite relevant here as the Board Administrative Law Judge below considered prior disciplinary actions in respondent's case pursuant to the *Bolling* framework. See *ante*, at 5–6; App. to Pet. for Cert. A–36 to A–37.

ness" inherent in the Board's consideration of prior disciplinary actions subject to pending grievances, but also is *inconsistent* with the agency's statutory burden to show that its decision is supported by a "preponderance of the evidence." See Brief for Respondent 34–37. Properly disposing of this case requires that we address these arguments.[2]

This is not a difficult task because the *Bolling* framework provides federal employees with more than adequate procedural safeguards. Title 5 U. S. C. § 7503(b), for instance, sets forth the basic procedural protections to which employees receiving minor discipline are entitled pursuant to the Civil Service Reform Act of 1978 (CSRA).[3] Conspicuously absent from the statutory provision is any opportunity to appeal a minor disciplinary action to the Board. Thus, as petitioner points out, "it can hardly be said that the *Bolling* framework for collateral review of prior discipline conflicts with the CSRA, when Congress chose not to provide for *any* [Board] review of minor disciplinary actions." See Reply Brief for Petitioner 12–13 (emphasis in original).

Respondent's argument that the *Bolling* framework conflicts with the "preponderance of the evidence" standard set forth in 5 U. S. C. § 7701(c)(1)(B) is also unavailing. The logical consequence of respondent's position is that the Board

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[2] The Court accurately notes that respondent's brief in the Federal Circuit merely argued that the Board erred by relying upon prior disciplinary actions and nowhere mentioned the *Bolling* framework. See *ante*, at 7. Petitioner, however, has put the *Bolling* framework squarely into play by relying upon it to support its contention that the Board's practice of considering prior disciplinary actions is not an abuse of discretion. Given that petitioner, in defending the Board's practice, raises the *Bolling* framework for the first time in this Court, respondent surely has not waived her right to argue that the protections provided by the *Bolling* framework are inadequate to save the practice invalidated by the Federal Circuit.

[3] This statutory provision applies to suspensions for 14 days or less. 5 U. S. C. § 7503(a). Respondent's prior disciplinary actions pending in grievance proceedings fall into this category.

would be required to review *de novo* all facts supporting all prior disciplinary actions relied upon by an agency to justify the reasonableness of a penalty, whether or not the prior actions were ever grieved.[4] Nothing in the CSRA supports this rather remarkable proposition. At most, the statute requires an agency to prove the existence of prior disciplinary actions; it does not place the burden on the agency to prove the facts underlying those actions.

The central flaw in the Federal Circuit's decision is that it relies on the mistaken assumption that the Board's review process and collectively bargained grievance proceedings are somehow linked. 212 F. 3d, at 1300. This assumption is not supported by the CSRA. Under the statute, the Board's review process and collectively bargained grievance procedures constitute entirely separate structures. As a result, the Board need not wait for an employee's pending grievances to be resolved before taking account of prior disciplinary actions in its assessment of the reasonableness of a penalty given in a subsequent disciplinary action.[5]

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[4] JUSTICE GINSBURG's suggestion to the contrary, see *post*, at 16, n. 2 (opinion concurring in judgment), rests on the assumption that the Board's review process and collectively bargained grievance proceedings are somehow linked. As explained *infra* this page, such an assumption is erroneous. Title 5 U. S. C. § 7701(c)(1)(B) either requires an agency to prove by a preponderance of the evidence all facts supporting all prior disciplinary actions relied upon by an agency or it does not. Whether an employee has chosen to access collectively bargained grievance proceedings with respect to a prior disciplinary action is irrelevant to answering this question. Indeed, JUSTICE GINSBURG's reasoning still suggests that the Board must review *de novo* all facts supporting all prior minor disciplinary actions relied upon by agencies in cases where employees are not represented by a union as such employees have no ability to access collectively bargained grievance proceedings. Such a requirement, however, is nowhere to be found in the CSRA.

[5] Neither would it be, as JUSTICE GINSBURG intimates, "arbitrary and capricious" for the Board to disregard an arbitrator's reversal of a prior disciplinary action. *Post*, at 15 (opinion concurring in judgment). Such

For these reasons, I agree with the Court's decision to vacate the judgment of the Federal Circuit and remand for further proceedings.[6]

JUSTICE GINSBURG, concurring in the judgment.

Although I join the Court's judgment, I do so on grounds not stated in the Court's opinion. I note first that under *Bolling* v. *Department of Air Force*, the Board's review of prior disciplinary actions pending in negotiated grievance proceedings requires, in cases like this one, only that the Board determine whether an agency action was "clearly erroneous." 8 M. S. P. B. 658, 660 (1981). This summary and highly deferential standard is arguably inconsistent with the statutory requirement that the Board sustain a decision of an agency "only if . . . [it] is supported by a preponderance of the evidence." 5 U. S. C. §7701(c)(1)(B). The Court maintains that the adequacy of *Bolling* review to meet

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an argument, like the Federal Circuit's holding below, rests on the erroneous premise that the CSRA inextricably ties together the Board's review process and collectively bargained grievance proceedings. To be sure, the Board has *chosen* to link its review to collectively bargained grievance proceedings—at least to some extent—by adopting a policy of not relying upon disciplinary actions that have been reversed through grievance proceedings. Cf. *Jones* v. *Department of Air Force*, 24 MSPR 429, 430–431 (1984). But the Board is not required to do so. Neither JUSTICE GINSBURG nor the Federal Circuit cites any statutory provision mandating that the Board must take this step. The CSRA simply establishes no link between the Board's review process, which is designed to protect an employee's statutory rights, and grievance proceedings, which adjudicate rights secured through collective-bargaining agreements. As the Court points out: "Independent Board review of disciplinary actions . . . may at times result in the Board reaching a different conclusion than the arbitrator." *Ante*, at 10.

[6] Given the Board's stated policy of not relying upon disciplinary actions that have already been overturned in grievance proceedings at the time of Board review, see n. 5, *supra*, I agree that a remand is necessary for the Federal Circuit to consider the relevance of the fact that one of respondent's prior disciplinary actions had already been reversed when the Board finalized its review of her case.

§ 7701(c)(1)(B)'s preponderance of the evidence standard is a question "not before us." *Ante*, at 7, 10. In light of the unsettled issue, however, I would place no reliance upon the Board's "independent review" of prior discipline, see *ante*, at 7, 8, in this case. Nevertheless, I do not resist the Court's remand order for the reasons set out below.

MSPB regulations allow the Board to reopen an appeal and reconsider its decision "at any time." 5 CFR § 1201.118 (2001) ("The Board may reopen an appeal and reconsider a decision of [an administrative judge] on its own motion at any time, regardless of any other provisions of this part."). There is every reason to believe that the Board would reopen to reconsider a decision that credited a prior disciplinary action later overturned in arbitration. See *Jones* v. *Department of Air Force*, 24 MSPR 429, 431 (1984) (suspension "reversed by grievance . . . was effectively cancelled and thus should not be considered in determining a reasonable penalty for the current charge").[1] Notably, the Postal Service agrees that the Board may invoke its provision for reopening "in the event that the employee's prior disciplinary record has been revised as the result of a successful grievance." Brief for Petitioner 28; see also Tr. of Oral Arg. 22 (counsel for the Postal Service confirmed Service's recognition that "the [B]oard's regulations permit the [B]oard to reopen any case at any time to reconsider it in light of a grievance which may have proved successful").

Indeed, it might well be "arbitrary and capricious" in such a situation for the Board to disregard the employee's revised record and refuse to reopen. Cf. 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4433, p. 311 (1981) (a "judgment based upon the preclusive effects of [a prior] judgment should not stand if the [prior] judgment is

[1] The Board thus comprehends the two schemes—its own review, and arbitration under the bargained-for grievance procedure—as harmonious and not, as JUSTICE THOMAS does, *ante*, at 13 (concurring opinion), as entirely unrelated to each other.

reversed"); *id.*, at 312–315; Restatement (Second) of Judgments § 16 and Comment *c* (1982) (nullification of an earlier judgment on which a subsequent judgment relied "may be made the ground for appropriate proceedings for relief from the later judgment with any suitable provision for restitution of benefits that may have been obtained under that judgment"); *id.*, § 84 (generally, "a valid and final award by arbitration has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court").[2]

Gregory did not bring to the Board's attention her successful grievance of the Postal Service's first disciplinary action, *i. e.*, a letter of warning dated May 13, 1997, based on the April 7, 1997, incident, see *ante*, at 4; App. 43, 47–48. Under the MSPB's regulations, she may even now ask the Board to reopen based on the expungement of that action, or the Board may reopen "on its own motion." 5 CFR § 1201.118 (2001); see Tr. of Oral Arg. 26 (counsel for the Postal Service acknowledged that successful grievance of first disciplinary action "could have been brought to the attention of the [B]oard and still could be today"). Gregory may also bring to the Board's attention any revision resulting from success-

[2] JUSTICE THOMAS suggests, *ante*, at 12–13 (concurring opinion), that Gregory's argument would logically require the Board to review *de novo* any prior disciplinary action upon which the employer relied in removing an employee, "whether or not the prior actions were ever grieved." Failure to pursue an available grievance procedure or other avenue of appeal, however, would end the matter. It is well settled that one who fails timely to appeal an adverse decision is bound by that decision in later proceedings. See, *e. g.*, *New Haven Inclusion Cases*, 399 U. S. 392, 481 (1970) (holding that a party who "took no appeal" from an adverse order is "foreclosed by *res judicata*" from later seeking relief inconsistent with that order); see also 18 Wright, Miller, & Cooper, § 4433, at 305 ("preclusion cannot be defeated by electing to fo[r]go an available opportunity to appeal"); *id.*, at 305–308; Restatement (Second) of Judgments § 83 and Comment *a*, § 84 and Comment *e* (in general, administrative adjudications and arbitration awards have the same preclusive effects as court judgments).

ful grievances of the Postal Service's second and third disciplinary actions, *i. e.*, the seven-day suspension ordered on June 7, 1997, see *ante*, at 4; App. 41–42, 45–46, and the fourteen-day suspension ordered on August 7, 1997, see *ante*, at 4; App. 38–40.

Gregory asserts that the Postal Service resists arbitration of her second and third grievances on the ground that under the collective-bargaining agreement between the Postal Service and her union, predischarge grievances do not survive a discharge which has been made final. Brief for Respondent 10–12, and n. 5, 26–27. She does not suggest, however, that the union is disarmed from bargaining for postdischarge continuation of grievances through to completion of arbitration.[3]

Gregory, moreover, elected to resort to the MSPB "[a]t the advice of her then-counsel." *Id.*, at 9. She could have asked her union to challenge her dismissal before an arbitrator.[4] Had she and her union opted for arbitration rather than MSPB review of the dismissal, she might have fared better; it appears that a labor arbitrator, in determining the reasonableness of a penalty, would have accorded no weight to prior discipline grieved but not yet resolved by a completed arbitration. See *Arbitration Between National Assn. of Letter Carriers, AFL–CIO, and USPS*, Case No. E94 N–4E–D 96075418, pp. 16–18 (Apr. 19, 1999) (Snow, Arb.), Lodging of Respondent 57–59 (referring to parties' "past practice of giving unresolved grievances no standing in removal hearings," arbitrator granted a continuance

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[3] At oral argument counsel for the Postal Service sought to "make clear" that "if this Court reverses the decision [of the Federal Circuit]," the Service "would not object to the continuance of [a] grievance." Tr. of Oral Arg. 55.

[4] Grievances "may be appealed to . . . arbitration" only "by the certified representative of the Union." 1998–2001 Agreement Between National Association of Letter Carriers, AFL–CIO and U. S. Postal Service, Art. 15, § 4(A)(2).

"pending resolution of an underlying disciplinary grievance"); *Arbitration Between USPS and National Assn. of Letter Carriers, AFL–CIO*, Case No. D90 N–4D–D 95076768, pp. 19–21 (Mar. 20, 1996) (Sickles, Arb.), Lodging of Respondent 27–29 (although employing agency need not await resolution of prior grievances before ordering an employee's removal, an arbitrator may not take account of prior discipline until the appeals process has yielded a final resolution); *Arbitration Between USPS and National Post Office Mail Handlers*, Case No. MC–S–0874–D, p. 7 (June 18, 1977) (Fasser, Arb.), Lodging of Respondent 7 ("Until th[e] appeal [of a prior disciplinary action] is finally adjudicated, it has no standing *in* this proceeding." (emphasis added)). Gregory, having at her own option forgone arbitration proceedings, in which prior discipline could not weigh against her while grievances were underway, is not comfortably situated to complain that the procedure she elected employed a different rule.

Given (1) the Board's reopening regulation, (2) the alternative arbitration forum Gregory might have pursued, (3) the Court's explicit reservation of the question of "the adequacy of *Bolling* review," *ante*, at 7, 10, and (4) the apparent, incorrect view of the Federal Circuit that the Postal Service itself could not take account of prior disciplinary action that is the subject of a pending grievance proceeding, see 212 F. 3d 1296, 1299, 1300 (2000),[5] I agree that a remand is in order.

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[5] The petition for certiorari and the brief for petitioner state the question presented as follows: "Whether a federal *agency*, when disciplining or removing an employee for misconduct pursuant to the Civil Service Reform Act of 1978, 5 U. S. C. § 1101 *et seq.*, may take account of prior disciplinary actions that are the subject of pending grievance proceedings." Pet. for Cert. (I); Brief for Petitioner (I) (emphasis added).

Syllabus

TRW INC. *v.* ANDREWS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1045. Argued October 9, 2001—Decided November 13, 2001

The Fair Credit Reporting Act (FCRA or Act) requires credit reporting agencies, *inter alia*, to maintain "reasonable procedures" to avoid improper disclosures of consumer credit information. 15 U. S. C. § 1681e(a). The Act's limitations provision prescribes that an action to enforce any liability created under the Act must be brought "within two years from the date on which the liability arises, except that where a defendant has . . . willfully misrepresented any information required under [the Act] to be disclosed to [the plaintiff] and the information . . . is material to [a claim under the Act], the action may be brought at any time within two years after [the plaintiff's] discovery of the misrepresentation." § 1681p.

Plaintiff-respondent Adelaide Andrews visited a doctor's office in Santa Monica, California, and there filled out a form listing her name, Social Security number, and other basic information. An office receptionist named Andrea Andrews (the Impostor) copied the data and moved to Las Vegas, where she attempted to open credit accounts using Andrews' Social Security number and her own last name and address.

On July 25, September 27, and October 28, 1994, and on January 3, 1995, defendant-petitioner TRW Inc. furnished copies of Andrews' credit report to companies from which the Impostor sought credit. Andrews did not learn of these disclosures until May 31, 1995, when she sought to refinance her home and in the process received a copy of her credit report reflecting the Impostor's activity. She sued TRW for injunctive and monetary relief on October 21, 1996, alleging that TRW had violated the Act by failing to verify, predisclosure of her credit report to third parties, that Adelaide Andrews of Santa Monica initiated the credit applications or was otherwise involved in the underlying transactions. TRW moved for partial summary judgment, arguing, *inter alia*, that the FCRA's statute of limitations had expired on Andrews' claims stemming from TRW's first two disclosures because both occurred more than two years before she brought suit. Andrews countered that the limitations period on those claims did not commence until she discovered the disclosures. The District Court held the two claims time barred, reasoning that § 1681p's explicit exception, which covers only misrepresentation claims, precludes judicial attribution of a broader discovery rule

to the FCRA. The Ninth Circuit reversed, applying what it considered to be the "general federal rule" that a statute of limitations starts running when a party knows or has reason to know she was injured, unless Congress expressly legislates otherwise.

Held:

1. A general discovery rule does not govern § 1681p. That section explicitly delineates the exceptional case in which discovery triggers the two-year limitation, and Andrews' case does not fall within the exceptional category. Pp. 27–33.

(a) Even if the Ninth Circuit correctly identified a general presumption in favor of a discovery rule, an issue this case does not oblige this Court to decide, the Appeals Court significantly overstated the scope and force of such a presumption. That court placed undue weight on *Holmberg* v. *Armbrecht*, 327 U. S. 392, 397, which stands for the proposition that equity tolls the statute of limitations in cases of fraud or concealment, but does not establish a general presumption across all contexts. The only other cases in which the Court has recognized a prevailing discovery rule, moreover, were decided in two contexts, latent disease and medical malpractice, "where the cry for [such a] rule is loudest," *Rotella* v. *Wood*, 528 U. S. 549, 555. See *United States* v. *Kubrick*, 444 U. S. 111; *Urie* v. *Thompson*, 337 U. S. 163. The Court has also observed that lower federal courts generally apply a discovery rule when a statute is silent on the issue, but has not adopted that rule as its own. Further, and beyond doubt, the Court has never endorsed the Ninth Circuit's view that Congress can convey its refusal to adopt a discovery rule only by explicit command, rather than by implication from the particular statute's structure or text. Thus, even if the presumption identified by the Ninth Circuit exists, it would not apply to the FCRA, for that Act does not govern an area of the law that cries out for application of a discovery rule and is not silent on the issue of when the statute of limitations begins to run. Pp. 27–28.

(b) Section 1681p's text and structure evince Congress' intent to preclude judicial implication of a discovery rule. Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent. *Andrus* v. *Glover Constr. Co.*, 446 U. S. 608, 616–617. Section 1681p provides that the limitation period generally runs from the date "liability arises," subject to a single exception for cases involving a defendant's willful misrepresentation of material information. It would distort § 1681p's text to convert the exception into the rule. See *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 168. Pp. 28–29.

Syllabus

(c) At least equally telling, reading a general discovery rule into § 1681p would in practical effect render the express exception superfluous in all but the most unusual circumstances. In the paradigmatic setting in which a plaintiff requests a credit report and the reporting agency responds by concealing its wrongdoing, the express exception would do no work other than that performed by a general discovery rule. The Court rejects Andrews' and the Government's attempt to give some independent scope to the exception by characterizing it as a codification of the doctrine of equitable estoppel. The scenario constructed by Andrews and the Government to support this characterization is unlikely to occur in reality. In any event, Andrews and the Government concede that the independent function one could attribute to the express exception under their theory would arise only in rare and egregious cases. Adopting their position would therefore render the express exception insignificant, if not wholly superfluous, contrary to a cardinal principle of statutory construction. Pp. 29–31.

(d) Andrews' two additional arguments in defense of the decision below are unconvincing. First, her contention that a discovery rule is expressed in the words framing § 1681p's general rule—"date on which the liability arises"—is not compelled by the dictionary definition of "arise" and is unsupported by this Court's precedent. Second, Andrews' reliance on § 1681p's legislative history fails to convince the Court that Congress intended *sub silentio* to adopt a general discovery rule in addition to the limited one it expressly provided. Pp. 32–33.

2. Because the issue was not raised or briefed below, this Court does not reach Andrews' alternative argument that, even if § 1681p does not incorporate a general discovery rule, "liability" does not "arise" under the FCRA when a violation occurs, but only on a sometimes later date when "actual damages" materialize. The Court notes that the Ninth Circuit has not adopted Andrews' argument and the Government does not join her in advancing it here. In any event, it is doubtful that the argument, even if valid, would aid Andrews in this case. Pp. 33–35.

225 F. 3d 1063, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined, *post*, p. 35.

Glen D. Nager argued the cause for petitioner. With him on the briefs was *Daniel H. Bromberg.*

Andrew Ryan Henderson argued the cause for respondent. With him on the brief were *Carlyle W. Hall, Jr.*, and *Gerald L. Sauer.*

Kent L. Jones argued the cause for the United States et al. as *amici curiae* urging affirmance. On the brief were *Acting Solicitor General Underwood, Deputy Solicitor General Wallace, Edward C. DuMont, John D. Graubert, John F. Daly,* and *Lawrence DeMille-Wagman.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the running of the two-year statute of limitations governing suits based on the Fair Credit Reporting Act (FCRA or Act), as added, 84 Stat. 1127, and amended, 15 U. S. C. § 1681 *et seq.* (1994 ed. and Supp. V).[1] The time prescription appears in § 1681p, which sets out a general rule and an exception. Generally, an action to enforce any liability created by the Act may be brought "within two years from the date on which the liability arises." The exception covers willful misrepresentation of "any information required under [the Act] to be disclosed to [the plaintiff]": When such a representation is material to a claim under the Act, suit may be brought "within two years after [the plaintiff's] discovery . . . of the misrepresentation."

Section 1681p's exception is not involved in this case; the complaint does not allege misrepresentation of information that the FCRA "require[s] . . . to be disclosed to [the plaintiff]." Plaintiff-respondent Adelaide Andrews nevertheless contends, and the Ninth Circuit held, that § 1681p's generally applicable two-year limitation commenced to run on

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**Richard J. Rubin, Joanne S. Faulkner, Willard P. Ogburn, Deborah M. Zuckerman, Stacy J. Canan,* and *Michael R. Schuster* filed a brief for the National Association of Consumer Advocates et al. as *amici curiae* urging affirmance.

[1] Congress has revised the FCRA extensively since the events at issue, but has not altered the provisions material to this case.

Andrews' claims only upon her discovery of defendant-petitioner TRW Inc.'s alleged violations of the Act.

We hold that a discovery rule does not govern § 1681p. That section explicitly delineates the exceptional case in which discovery triggers the two-year limitation. We are not at liberty to make Congress' explicit exception the general rule as well.

I

A

Congress enacted the FCRA in 1970 to promote efficiency in the Nation's banking system and to protect consumer privacy. See 15 U. S. C. § 1681(a) (1994 ed.). As relevant here, the Act seeks to accomplish those goals by requiring credit reporting agencies to maintain "reasonable procedures" designed "to assure maximum possible accuracy of the information" contained in credit reports, § 1681e(b), and to "limit the furnishing of [such reports] to" certain statutorily enumerated purposes, § 1681e(a); 15 U. S. C. § 1681b (1994 ed. and Supp. V). The Act creates a private right of action allowing injured consumers to recover "any actual damages" caused by negligent violations and both actual and punitive damages for willful noncompliance. See 15 U. S. C. §§ 1681n, 1681o (1994 ed.).[2]

B

The facts of this case are for the most part undisputed. On June 17, 1993, Adelaide Andrews visited a radiologist's office in Santa Monica, California. She filled out a new patient form listing certain basic information, including her name, birth date, and Social Security number. Andrews handed the form to the office receptionist, one Andrea Andrews (the Impostor), who copied the information and thereafter moved to Las Vegas, Nevada. Once there, the Impos-

[2] Under 1996 amendments to § 1681n, a plaintiff may also recover statutory damages of between $100 and $1,000 for willful violations. See 15 U. S. C. § 1681n(a)(1)(A) (1994 ed., Supp. V).

tor attempted on numerous occasions to open credit accounts using Andrews' Social Security number and her own last name and address.

On four of those occasions, the company from which the Impostor sought credit requested a report from TRW. Each time, TRW's computers registered a match between Andrews' Social Security number, last name, and first initial and therefore responded by furnishing her file. TRW thus disclosed Andrews' credit history at the Impostor's request to a bank on July 25, 1994; to a cable television company on September 27, 1994; to a department store on October 28, 1994; and to another credit provider on January 3, 1995. All recipients but the cable company rejected the Impostor's applications for credit.

Andrews did not learn of these disclosures until May 31, 1995, when she sought to refinance her home mortgage and in the process received a copy of her credit report reflecting the Impostor's activity. Andrews concedes that TRW promptly corrected her file upon learning of its mistake. She alleges, however, that the blemishes on her report not only caused her inconvenience and emotional distress, they also forced her to abandon her refinancing efforts and settle for an alternative line of credit on less favorable terms.

On October 21, 1996, almost 17 months after she discovered the Impostor's fraudulent conduct and more than two years after TRW's first two disclosures, Andrews filed suit in the United States District Court for the Central District of California. Her complaint stated two categories of FCRA claims against TRW, only the first of which is relevant here.[3] See App. 15–17. Those claims alleged that TRW's

[3] The second alleged that TRW had collected information about the Impostor's activities and inaccurately attributed that activity to Andrews, in violation of its obligation under § 1681e(b) to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the

four disclosures of her information in response to the Impostor's credit applications were improper because TRW failed to verify, predisclosure, that Adelaide Andrews of Santa Monica initiated the requests or was otherwise involved in the underlying transactions. Andrews asserted that by processing requests that matched her profile on Social Security number, last name, and first initial but did not correspond on other key identifiers, notably birth date, address, and first name, TRW had facilitated the Impostor's identity theft. According to Andrews, TRW's verification failure constituted a willful violation of § 1681e(a), which requires credit reporting agencies to maintain "reasonable procedures" to avoid improper disclosures. She sought injunctive relief, punitive damages, and compensation for the "expenditure of time and money, commercial impairment, inconvenience, embarrassment, humiliation and emotional distress" that TRW had allegedly inflicted upon her. App. 15–16.

TRW moved for partial summary judgment, arguing, *inter alia*, that the FCRA's statute of limitations had expired on Andrews' claims based on the July 25 and September 27, 1994, disclosures because both occurred more than two years before she brought suit. Andrews countered that her claims as to all four disclosures were timely because the limitations period did not commence until May 31, 1995, the date she learned of TRW's alleged wrongdoing. The District Court, agreeing with TRW that § 1681p does not incorporate a general discovery rule, held that relief stemming from the July and September 1994 disclosures was time barred. *Andrews*

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individual about whom [a] report relates." A jury resolved this claim in favor of TRW.

The complaint also stated FCRA claims against Trans Union Corporation, another credit reporting agency involved in the Impostor's conduct. In addition, Andrews brought a state-law claim against each defendant. The resolution of these claims is not at issue here.

v. *Trans Union Corp.*, 7 F. Supp. 2d 1056, 1066–1067 (CD Cal. 1998).[4]

The Court of Appeals for the Ninth Circuit reversed this ruling, applying what it considered to be the "general federal rule . . . that a federal statute of limitations begins to run when a party knows or has reason to know that she was injured." 225 F. 3d 1063, 1066 (2000). The court rejected the District Court's conclusion that the text of § 1681p, and in particular the limited exception set forth in that section, precluded judicial attribution of such a rule to the FCRA. "[U]nless Congress has expressly legislated otherwise," the Ninth Circuit declared, "the equitable doctrine of discovery is read into every federal statute of limitations." *Id.*, at 1067 (internal quotation marks omitted). Finding no such express directive, the Court of Appeals held that "none of [Andrews'] injuries were stale when suit was brought." *Id.*, at 1066. Accordingly, the court reinstated Andrews' improper disclosure claims and remanded them for trial.

In holding that § 1681p incorporates a general discovery rule, the Ninth Circuit parted company with four other Circuits; those courts have concluded that a discovery exception other than the one Congress expressed may not be read into the Act. See *Clark* v. *State Farm Fire & Casualty Ins. Co.*, 54 F. 3d 669 (CA10 1995); *Rylewicz* v. *Beaton Servs., Ltd.*, 888 F. 2d 1175 (CA7 1989); *Houghton* v. *Insurance Crime Prevention Institute*, 795 F. 2d 322 (CA3 1986); *Clay* v. *Equifax, Inc.*, 762 F. 2d 952 (CA11 1985). We granted certiorari to resolve this conflict, 532 U. S. 902 (2001), and now reverse.

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[4] The District Court also granted summary judgment to TRW on the two remaining improper disclosure claims, reasoning that TRW maintained adequate procedures and that the disputed disclosures had been made for a permissible purpose as defined by § 1681b. See *Andrews* v. *Trans Union Corp.*, 7 F. Supp. 2d, at 1068–1071. The Ninth Circuit reversed that ruling. 225 F. 3d 1063, 1067–1068 (2000). Such questions, the Appeals Court held, "needed determination by a jury not a judge." *Id.*, at 1068.

II

The Court of Appeals rested its decision on the premise that all federal statutes of limitations, regardless of context, incorporate a general discovery rule "unless Congress has expressly legislated otherwise." 225 F. 3d, at 1067. To the extent such a presumption exists, a matter this case does not oblige us to decide, the Ninth Circuit conspicuously overstated its scope and force.

The Appeals Court principally relied on our decision in *Holmberg* v. *Armbrecht*, 327 U. S. 392 (1946). See 225 F. 3d, at 1067. In that case, we instructed with particularity that "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered." *Holmberg*, 327 U. S., at 397 (internal quotation marks omitted). *Holmberg* thus stands for the proposition that equity tolls the statute of limitations in cases of fraud or concealment; it does not establish a general presumption applicable across all contexts. The only other cases in which we have recognized a prevailing discovery rule, moreover, were decided in two contexts, latent disease and medical malpractice, "where the cry for [such a] rule is loudest," *Rotella* v. *Wood*, 528 U. S. 549, 555 (2000). See *United States* v. *Kubrick*, 444 U. S. 111 (1979); *Urie* v. *Thompson*, 337 U. S. 163 (1949).

We have also observed that lower federal courts "generally apply a discovery accrual rule when a statute is silent on the issue." *Rotella*, 528 U. S., at 555; see also *Klehr* v. *A. O. Smith Corp.*, 521 U. S. 179, 191 (1997) (citing *Connors* v. *Hallmark & Son Coal Co.*, 935 F. 2d 336, 342 (CADC 1991), for the proposition that "federal courts generally apply [a] discovery accrual rule when [the] statute does not call for a different rule"). But we have not adopted that position as our own. And, beyond doubt, we have never endorsed the Ninth Circuit's view that Congress can convey its refusal to adopt a discovery rule only by explicit command, rather than

by implication from the structure or text of the particular statute.

The Ninth Circuit thus erred in holding that a generally applied discovery rule controls this case. The FCRA does not govern an area of the law that cries out for application of a discovery rule, nor is the statute "silent on the issue" of when the statute of limitations begins to run. Section 1681p addresses that precise question; the provision reads:

> "An action to enforce any liability created under [the Act] may be brought . . . within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under [the Act] to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under [the Act], the action may be brought at any time within two years after discovery by the individual of the misrepresentation."

We conclude that the text and structure of § 1681p evince Congress' intent to preclude judicial implication of a discovery rule.

"Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Andrus* v. *Glover Constr. Co.*, 446 U. S. 608, 616–617 (1980). Congress provided in the FCRA that the two-year statute of limitations runs from "the date on which the liability arises," subject to a single exception for cases involving a defendant's willful misrepresentation of material information. § 1681p. The most natural reading of § 1681p is that Congress implicitly excluded a general discovery rule by explicitly including a more limited one. See *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 168 (1993) (*"Expressio unius est exclusio alterius."*). We would distort § 1681p's text by converting

the exception into the rule. Cf. *United States* v. *Brockamp*, 519 U. S. 347, 352 (1997) ("explicit listing of exceptions" to running of limitations period considered indicative of Congress' intent to preclude "courts [from] read[ing] other unmentioned, open-ended, 'equitable' exceptions into the statute").

At least equally telling, incorporating a general discovery rule into § 1681p would not merely supplement the explicit exception contrary to Congress' apparent intent; it would in practical effect render that exception entirely superfluous in all but the most unusual circumstances. A consumer will generally not discover the tortious conduct alleged here—the improper disclosure of her credit history to a potential user—until she requests her file from a credit reporting agency. If the agency responds by concealing the offending disclosure, both a generally applicable discovery rule and the misrepresentation exception would operate to toll the statute of limitations until the concealment is revealed. Once triggered, the statute of limitations would run under either for two years from the discovery date. In this paradigmatic setting, then, the misrepresentation exception would have no work to do.

Both Andrews and the Government, appearing as *amicus* in her support, attempt to generate some role for the express exception independent of that filled by a general discovery rule. They conceive of the exception as a codification of the judge-made doctrine of equitable estoppel, which, they argue, operates only *after* the discovery rule has triggered the limitations period, preventing a defendant from benefiting from its misrepresentation by tolling that period until the concealment is uncovered.

To illustrate this supposed separate application, Andrews and the Government frame the following scenario: A credit reporting agency injures a consumer by disclosing her file for an improper purpose. The consumer has no reason to suspect the violation until a year later, when she applies for

and is denied credit as a result of the agency's wrongdoing. At that point, the Government asserts, "the consumer would presumably be put on inquiry notice of the violation, and the discovery rule would start the running of the normal limitation period." Brief for United States et al. as *Amici Curiae* 22 (emphasis deleted); see Tr. of Oral Arg. 35–36 (argument in accord by Andrews' counsel). Some days or months later, the consumer follows up on her suspicions by requesting a copy of her credit report, to which the agency responds by concealing the initial improper disclosure. According to Andrews and the Government, the misrepresentation exception would then operate to toll the already-commenced limitations period until the agency reveals its wrongdoing.

We reject this argument for several reasons. As an initial matter, we are not persuaded by this effort to distinguish the practical function of a discovery rule and the express exception, because we doubt that the supporting scenario is likely to occur outside the realm of theory. The fatal weakness in the narrative is its assumption that a consumer would be charged with constructive notice of an improper disclosure upon denial of a credit application. If the consumer habitually paid her bills on time, the denial might well lead her to suspect a prior credit agency error. But the credit denial would place her on "inquiry notice," and the discovery rule would trigger the limitations period at that point, only if a reasonable person in her position would have learned of the injury in the exercise of due diligence. See *Stone* v. *Williams*, 970 F. 2d 1043, 1049 (CA2 1992) ("The duty of inquiry having arisen, plaintiff is charged with whatever knowledge an inquiry would have revealed."); 2 C. Corman, Limitation of Actions § 11.1.6, p. 164 (1991) ("It is obviously unreasonable to charge the plaintiff with failure to search for the missing element of the cause of action if such element would not have been revealed by such search.").

In the usual circumstance, the plaintiff will gain knowledge of her injury from the credit reporting agency. The

scenario put forth by Andrews and the Government, however, requires the assumption that, even if the consumer exercised reasonable diligence by requesting her credit report without delay, she would not in fact learn of the disclosure because the credit reporting agency would conceal it. The uncovering of that concealment would remain the triggering event for both the discovery rule and the express exception. In this scenario, as in the paradigmatic one, the misrepresentation exception would be superfluous.

In any event, both Andrews and the Government concede that the independent function one could attribute to the express exception would arise only in "rare and egregious case[s]." Brief for Respondent 32–33; see Brief for United States et al. as *Amici Curiae* 24 (implied discovery rule would apply in "vast majority" of cases). The result is that a rule nowhere contained in the text of § 1681p would do the bulk of that provision's work, while a proviso accounting for more than half of that text would lie dormant in all but the most unlikely situations.

It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) (internal quotation marks omitted); see *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'" (quoting *Montclair* v. *Ramsdell*, 107 U. S. 147, 152 (1883))). "[W]ere we to adopt [Andrews'] construction of the statute," the express exception would be rendered "insignificant, if not wholly superfluous." *Duncan*, 533 U. S., at 174. We are "reluctant to treat statutory terms as surplusage in any setting," *ibid.* (internal alteration and quotation marks omitted), and we decline to do so here.[5]

[5] Similarly, even if we agreed that the discovery and equitable estoppel doctrines could comfortably coexist in this setting, we would reject the contention that we are therefore free to incorporate both into the

Andrews advances two additional arguments in defense of the decision below, neither of which we find convincing. She contends, first, that the words "date on which the liability arises"—the phrase Congress used to frame the general rule in § 1681p—"literally expres[s]" a discovery rule because liability does not "arise" until it "present[s] itself" or comes to the attention of the potential plaintiff. Brief for Respondent 13. The dictionary definition of the word "arise" does not compel such a reading; to the contrary, it can be used to support either party's position. See Webster's Third New International Dictionary 117 (1966) (arise defined as "to come into being"; "to come about"; or "to become apparent in such a way as to demand attention"); Black's Law Dictionary 138 (rev. 4th ed. 1968) ("to come into being or notice"). And TRW offers a strong argument that we have in fact construed that word to imply the result Andrews seeks to avoid. See Brief for Petitioner 16–20 (citing, *inter alia*, *McMahon* v. *United States*, 342 U. S. 25 (1951) (statute of limitations triggered on date "cause of action arises" incorporates injury-occurrence rule)). On balance, we conclude, the phrase "liability arises" is not particularly instructive, much less dispositive of this case.

Similarly unhelpful, in our view, is Andrews' reliance on the legislative history of § 1681p. She observes that early versions of that provision, introduced in both the House and Senate, keyed the start of the limitations period to "the date of the occurrence of the violation." S. 823, 91st Cong., 1st Sess., § 618 (1969); H. R. 16340, 91st Cong., 2d Sess., § 27 (1970); H. R. 14765, 91st Cong., 1st Sess., § 617 (1969). From the disappearance of that language in the final version of § 1681p, Andrews infers a congressional intent to reject the rule that the deleted words would have plainly established.

FCRA. As we have explained, see *supra*, at 28–29, we read Congress' codification of one judge-made doctrine not as a license to imply others, but rather as an intentional rejection of those it did not codify.

As TRW notes, however, Congress also heard testimony urging it to enact a statute of limitations that runs from "the date on which the violation is discovered" but declined to do so. Hearings before the Subcommittee on Consumer Affairs of the House Committee on Banking and Currency, 91st Cong., 2d Sess., 188 (1970). In addition, the very change to § 1681p's language on which Andrews relies could be read to refute her position. The misrepresentation exception was added at the same time Congress changed the language "date of the occurrence of the violation" to "liability arises." Compare S. 823, 91st Cong., 1st Sess., § 618 (1969); H. R. 16340, 91st Cong., 2d Sess., § 27 (1970); H. R. 14765, 91st Cong., 1st Sess., § 617 (1969), with H. R. Rep. No. 91–1587, p. 22 (1970). We doubt that Congress, when it inserted a carefully worded exception to the main rule, intended simultaneously to create a general discovery rule that would render that exception superfluous. In sum, the evidence of the early incarnations of § 1681p, like the "liability arises" language on which Congress ultimately settled, fails to convince us that Congress intended *sub silentio* to adopt a general discovery rule in addition to the limited one it expressly provided.

III

In this Court, Andrews for the first time presents an alternative argument based on the "liability arises" language of § 1681p. Brief for Respondent 22–25. She contends that even if § 1681p does not incorporate a discovery rule, "liability" under the FCRA does not necessarily "arise" when a violation of the Act occurs. Noting that the FCRA's substantive provisions tie "liability" to the presence of "actual damages," §§ 1681n, 1681o, and that "arise" means at least "to come into existence," Andrews concludes that "liability arises" only when actual damages materialize. Not until then, she maintains, will all the essential elements of a claim coalesce: "duty, breach, causation, and *injury*." Brief for Respondent 23; see *Hyde* v. *Hibernia Nat. Bank*, 861 F. 2d

446, 449 (CA5 1988) ("The requirement that a consumer sustain some injury in order to establish a cause of action suggests that the statute should be triggered when the agency issues an erroneous report to an institution with which the consumer is dealing.").

Accordingly, Andrews asserts, her claims are timely: The disputed "liability" for actual damages did not "arise" until May 1995, when she suffered the emotional distress, missed opportunities, and inconvenience cataloged in her complaint; prior to that time, "she had no FCRA claim to bring," Brief for Respondent 24 (emphasis deleted). Cf. *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 200–201 (1997) (rejecting construction of statute under which limitations period would begin running before cause of action existed in favor of "standard rule" that the period does not commence earlier than the date "the plaintiff can file suit and obtain relief").[6]

We do not reach this issue because it was not raised or briefed below. See Reply Brief for Petitioner 18–19. We note, however, that the Ninth Circuit has not embraced Andrews' alternative argument, see 225 F. 3d, at 1066 ("Liabil-

[6] The opinion concurring in the judgment rips *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997), from its berth, see *post*, at 36, 38; we here set the record straight. The question presented in *Bay Area Laundry* was whether a statute of limitations could commence to run on one day while the right to sue ripened on a later day. We answered that question, and only that question, "no," unless the statute indicates otherwise. See 522 U. S., at 200–201. Continuing on beyond the place where the concurrence in the judgment leaves off, we clarified:

"Unless Congress has told us otherwise in the legislation at issue, a cause of action does not become 'complete and present' for limitations purposes until the plaintiff can file suit and obtain relief. See *Reiter* v. *Cooper*, 507 U. S. 258, 267 (1993) ("While it is theoretically possible for a statute to create a cause of action that accrues at one time for the purpose of calculating when the statute of limitations begins to run, but at another time for the purpose of bringing suit, we will not infer such an odd result in the absence of any such indication in the statute.")." *Id.*, at 201.

ity under the [Act] arises when a consumer reporting agency fails to comply with § 1681e."), and the Government does not join her in advancing it here.

Further, we doubt that the argument, even if valid, would aid Andrews in this case. Her claims alleged *willful* violations of § 1681e(a) and are thus governed by § 1681n. At the time of the events in question, that provision stated: "Any consumer reporting agency . . . which willfully fails to comply with any requirement imposed under [the Act] with respect to any consumer is liable to that consumer in an amount equal to the sum of . . . any actual damages" and "such amount of punitive damages as the court may allow." 15 U. S. C. § 1681n (1994 ed.). Punitive damages, which Andrews sought in this case, could presumably be awarded at the moment of TRW's alleged wrongdoing, even if "actual damages" did not accrue at that time. On Andrews' theory, then, at least some of the liability she sought to enforce arose when the violations occurred, and the limitations period therefore began to run at that point.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in the judgment.

As the Court notes, *ante*, at 26, 27, the Court of Appeals based its decision on what it called the "general federal rule . . . that a federal statute of limitations begins to run when a party knows or has reason to know that she was injured," 225 F. 3d 1063, 1066 (CA9 2000). The Court declines to say whether that expression of the governing general rule is correct. See *ante*, at 27 ("To the extent such a

presumption exists, a matter this case does not oblige us to decide . . ."). There is in my view little doubt that it is not, and our reluctance to say so today is inexplicable, given that we held, a mere four years ago, that a statute of limitations which says the period runs from "the date on which the cause of action arose," 29 U. S. C. § 1451(f)(1) (1994 ed.), "incorporates *the standard rule* that the limitations period commences when the plaintiff has a complete and present cause of action," *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997) (emphasis added and internal quotation marks omitted).[1]

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[1] This analysis does not, as the Court asserts, *ante*, at 34, n. 6, "ri[p] *Bay Area Laundry* . . . from its berth." The question presented on which certiorari was granted in the case was not, as the Court now recharacterizes it, the generalized inquiry "whether a statute of limitations could commence to run on one day while the right to sue ripened on a later day," *ibid.*, but rather (as set forth in somewhat abbreviated form in petitioner Bay Area Laundry's merits brief) the much more precise question, "When does the statute of limitations begin to run on an action under the Multiemployer Pension Plan Amendments Act, 29 U. S. C. § 1381 *et seq.*, to collect overdue employer withdrawal liability payments?" Brief for Petitioner, O. T. 1997, No. 96–370, p. i. (Framing of the question in respondent Ferbar Corporation's merits brief was virtually identical.) The Court's *Bay Area Laundry* opinion introduced its discussion of the merits as follows:

"[T]he Ninth Circuit's decision conflicts with an earlier decision of the District of Columbia Circuit [which] held that the statute of limitations . . . runs from the date the employer misses a scheduled payment, not from the date of complete withdrawal. . . . The Third and Seventh Circuits have also held that the statute of limitations runs from the failure to make a payment . . . . We granted certiorari . . . to resolve these conflicts." 522 U. S., at 200.

The Court's assertion that we did not answer the question presented, and did not resolve the conflicts—held only that the Ninth Circuit was wrong to say that the limitations period commenced before there was a right of action, and not that the other Circuits were right to say that the period commenced upon the failure to make a payment—is as erroneous as it is implausible. *Bay Area Laundry* held that the cause of action arose when "the employer violated an obligation owed the plan," *id.*, at

Bay Area Laundry quoted approvingly our statement in *Clark* v. *Iowa City*, 20 Wall. 583, 589 (1875), that "[a]ll statutes of limitation begin to run when the right of action is complete . . . ." This is unquestionably the traditional rule: Absent other indication, a statute of limitations begins to run at the time the plaintiff "has the right to apply to the court for relief . . . ." 1 H. Wood, Limitation of Actions § 122a, p. 684 (4th ed. 1916). "That a person entitled to an action has no knowledge of his right to sue, or of the facts out of which his right arises, does not postpone the period of limitation." 2 *id.*, § 276c(1), at 1411.

The injury-discovery rule applied by the Court of Appeals is bad wine of recent vintage. Other than our recognition of the historical exception for suits based on fraud, *e. g.*, *Bailey* v. *Glover*, 21 Wall. 342, 347–350 (1875), we have deviated from the traditional rule and imputed an injury-discovery rule to Congress on only one occasion. *Urie* v. *Thompson*, 337 U. S. 163, 169–171 (1949).[2] We did so there because we could not imagine that legislation as "humane" as the Federal Employers' Liability Act would bar recovery for latent medical injuries. *Id.*, at 170. We repeated this sentiment in *Rotella* v. *Wood*, 528 U. S. 549, 555 (2000), saying that the "cry for a discovery rule is loudest" in the context of medical-malpractice suits; and we repeat it again today with the assertion that the present case does *not* involve "an area

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202, *because* "the standard rule" is that the period begins to run when the plaintiff has a "complete and present cause of action," *id.*, at 201 (internal quotation marks omitted).

[2] As the Court accurately notes, *ante*, at 27, in one other case we simply observed (without endorsement) that several Courts of Appeals had substituted injury-discovery for the traditional rule in medical-malpractice actions under the Federal Tort Claims Act, see *United States* v. *Kubrick*, 444 U. S. 111, 120, and n. 7 (1979), and in two other cases observed (without endorsement) that lower federal courts "generally apply" an injury-discovery rule, see *Rotella* v. *Wood*, 528 U. S. 549, 555 (2000); *Klehr* v. *A. O. Smith Corp.*, 521 U. S. 179, 191 (1997).

of the law that cries out for application of a discovery rule," *ante*, at 28. These cries, however, are properly directed not to us, but to Congress, whose job it is to decide how "humane" legislation should be—or (to put the point less tendentiously) to strike the balance between remediation of all injuries and a policy of repose. See *Amy* v. *Watertown (No. 2)*, 130 U. S. 320, 323–324 (1889) ("[T]he cases in which [the statute of limitations may be suspended by causes not mentioned in the statute itself] are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it").

Congress has been operating against the background rule recognized in *Bay Area Laundry* for a very long time. When it has wanted us to apply a different rule, such as the injury-discovery rule, it has said so. See, *e. g.*, 18 U. S. C. § 1030(g) (1994 ed., Supp. V).[3] See also, *e. g.*, 15 U. S. C. § 77m (1994 ed., Supp. V);[4] 42 U. S. C. § 9612(d)(2) (1994 ed.).[5] To apply a new background rule to previously enacted legislation would reverse prior congressional judgments; and to display uncertainty regarding the current background rule makes all unspecifying new legislation a roll of the dice. Today's opinion, in clarifying the meaning of 15 U. S. C. § 1681p, casts the meaning of innumerable other limitation periods in doubt.

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[3] "No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage."

[4] "No action shall be maintained to enforce any liability created under section 77k or 77*l*(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77*l*(a)(1) of this title, unless brought within one year after the violation upon which it is based."

[5] "No claim may be presented under this section . . . unless the claim is presented within 3 years after . . . [t]he date of the discovery of the loss and its connection with the release in question."

Because there is nothing in this statute to contradict the rule that a statute of limitations begins to run when the cause of action is complete, I concur in the judgment of the Court.

Appendix to Decree

NEBRASKA *v.* WYOMING ET AL.

ON PETITION FOR ORDER ENFORCING DECREE AND FOR INJUNCTIVE RELIEF

No. 108, Orig. Decided June 11, 1945, April 20, 1993, and May 30, 1995—Decree entered October 8, 1945—Order modifying and supplementing decree entered June 15, 1953—Decree entered November 13, 2001

Decree entered.

Opinions reported: 325 U. S. 589, 507 U. S. 584, 515 U. S. 1; decree reported: 325 U. S. 665; order modifying and supplementing decree reported: 345 U. S. 981.

The Final Report of the Special Master is received and ordered filed.

DECREE

This cause, having come to be heard on the Final Report of the Special Master appointed by the Court, IT IS HEREBY ORDERED THAT:

1. The Final Settlement Stipulation executed by all of the parties to this case and presented to the Special Master on March 15, 2001, is approved;

2. The proposed Modified Decree submitted as the Appendix to the Final Settlement Stipulation is entered, replacing the decree originally entered in this case on October 8, 1945, as modified on June 15, 1953;

3. All claims, counterclaims, and cross-claims brought in this case are hereby dismissed with prejudice; and

4. The parties shall share in the cost of this litigation in the manner that this Court shall order following the entry of the Modified Decree.

APPENDIX

Modified North Platte Decree

[Entered on October 8, 1945, *Nebraska* v. *Wyoming*, 325 U. S. 589, 665, modified and supplemented on June 15, 1953,

Nebraska v. *Wyoming*, 345 U. S. 981, and further modified November 13, 2001, *Nebraska* v. *Wyoming*, *supra*, p. 40.]

This Court equitably apportioned the North Platte River among the States of Colorado, Wyoming, and Nebraska in 1945. *Nebraska* v. *Wyoming*, 325 U. S. 589, 665 (1945). The Decree was amended pursuant to a stipulation and joint motion of the parties in 1953. *Nebraska* v. *Wyoming*, 345 U. S. 981. In 1986, the State of Nebraska filed suit against the State of Wyoming. In 1987, Wyoming filed counterclaims against Nebraska. This Court resolved certain issues on cross-motions for summary judgment in 1993. *Nebraska* v. *Wyoming*, 507 U. S. 584. In 1995, this Court granted in part and denied in part Nebraska's motion to amend its petition, and granted in part and denied in part Wyoming's motion to amend its counterclaims and to file cross-claims against the United States. *Nebraska* v. *Wyoming*, 515 U. S. 1. The parties have agreed upon this Court's entry of this Modified Decree to a dismissal with prejudice of all claims, counterclaims, and cross-claims for which leave to file was or could have been sought in this case.

The parties to this cause having filed a Final Settlement Stipulation dated March 13, 2001, which includes the parties' agreement to create the North Platte Decree Committee to assist them in monitoring, administering, and implementing this Modified Decree, and a Joint Motion for Approval of Stipulation, Modification of Decree, and Dismissal with Prejudice, and the Court being fully advised:

IT IS ORDERED:

That the Final Settlement Stipulation dated March 13, 2001, is hereby approved and adopted;

That all claims, counterclaims, and cross-claims for which leave to file was or could have been sought in this case are hereby dismissed with prejudice; and

That the Decree of October 8, 1945, as amended on June 15, 1953, is hereby modified as follows:

Appendix to Decree

I. The State of Colorado, its officers, attorneys, agents, and employees, be and they are hereby severally enjoined:

(a) From diverting or permitting the diversion of water from the North Platte River and its tributaries for the irrigation of more than a total of 145,000 acres of land in Jackson County, Colorado, during any one irrigation season;

(b) From storing or permitting the storage of more than a total amount of 17,000 acre-feet of water for irrigation purposes from the North Platte River and its tributaries in Jackson County, Colorado, between October 1 of any year and September 30 of the following year;

(c) From exporting out of the basin of the North Platte River and its tributaries in Jackson County, Colorado, to any other stream basin or basins more than 60,000 acre-feet of water in any period of ten consecutive years reckoned in continuing progressive series beginning with October 1, 1945.

II. The State of Wyoming, its officers, attorneys, agents, and employees, be and they are hereby severally enjoined:

(a) From diverting or permitting the diversion of water for irrigation from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Pathfinder Dam for the consumption in any period of ten consecutive years reckoned in continuing progressive series, of more than the largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive. This injunction becomes effective the first full calendar year after the date of entry of this Modified Decree. The consumptive use of irrigation water in this area to be counted under this injunction shall include the following:

(1) Water consumed for irrigation purposes on lands irrigated with surface water diversions of natural flow;

(2) Water consumed for irrigation purposes on lands irrigated with water stored pursuant to paragraph II(e);

(3) Water consumed for irrigation purposes on lands irrigated by water from hydrologically connected groundwater wells;

(4) Water consumed for purposes other than irrigation under water rights transferred since October 8, 1945, from an irrigation use to another use;

The largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive, has been determined by the parties pursuant to a methodology and procedures approved and adopted in the Final Settlement Stipulation to be 1,280,000 acre-feet. For the purpose of determining compliance with this injunction, the amount of water consumed for irrigation from such sources shall be determined by the same methodology and procedures. After ten years of administration, accounting, and reporting under this injunction, the methodology and the ten consecutive year limit will be reviewed by the North Platte Decree Committee pursuant to procedures approved and adopted in the Final Settlement Stipulation to determine if there is a better methodology for calculating the largest amount of water consumed for irrigation in such ten consecutive year period and for determining compliance. In making such calculation, any acreage historically reported by the Wyoming State Engineer as irrigated by direct flow surface water or stored water or as transfers, between 1952 and 1999, inclusive, and used in the existing methodology, shall not be changed. In addition, the other acreage used in the existing methodology shall not be changed unless the North Platte Decree Committee agrees that such change results in a more accurate determination of acres actually irrigated between 1952 and 1999, inclusive. In any new methodology, to determine compliance with the consumptive use limit, the acreage above Pathfinder Dam, when combined with the acreage between Pathfinder Dam and Guernsey Reservoir, cannot exceed the 226,000 acreage limitation pursuant to paragraph II(c). If Nebraska, Wyoming, and the

United States agree on a new methodology and a new limit, they shall notify the Court and this paragraph will be modified accordingly. As provided in paragraph XIII, absent agreement on a new methodology and a new limit, Nebraska, Wyoming, or the United States may seek recourse to the Court to resolve these issues.

(b) From diverting or permitting the diversion of water for irrigation from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, between Pathfinder Dam and Guernsey Reservoir for the consumption in any period of ten consecutive years reckoned in continuing progressive series, exclusive of the Kendrick Project, of more than the largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive. This injunction becomes effective the first full calendar year after the entry of this Modified Decree. The consumptive use of irrigation water in this area to be counted under this injunction shall include the following:

(1) Water consumed for irrigation purposes on lands irrigated with surface water diversions of natural flow;

(2) Water consumed for irrigation purposes on lands irrigated with water stored in reservoirs that store water from the tributaries between Pathfinder Dam and Guernsey Reservoir;

(3) Water consumed for irrigation purposes on lands irrigated by water from hydrologically connected groundwater wells;

(4) Water consumed for purposes other than irrigation with water rights transferred since October 8, 1945, from an irrigation use to another use;

The largest amount of water consumed for irrigation from such sources in any ten consecutive year period between 1952 and 1999, inclusive, has been determined by the parties pursuant to a methodology and procedures approved and adopted in the Final Settlement Stipulation to be 890,000

acre-feet. For the purpose of determining compliance with this injunction, the amount of water consumed for irrigation from such sources shall be determined by the same methodology and procedures. After ten years of administration, accounting, and reporting under this injunction, the methodology and the ten consecutive year limit will be reviewed by the North Platte Decree Committee pursuant to procedures approved and adopted in the Final Settlement Stipulation to determine if there is a better methodology for calculating the largest amount of water consumed for irrigation in such ten consecutive year period and for determining compliance. In making such calculation, any acreage historically reported by the Wyoming State Engineer as irrigated by direct flow surface water or stored water or as transfers, between 1952 and 1999, inclusive, and used in the existing methodology, shall not be changed. In addition, the other acreage used in the existing methodology shall not be changed unless the North Platte Decree Committee agrees that such change results in a more accurate determination of acres actually irrigated between 1952 and 1999, inclusive. In any new methodology, to determine compliance with the consumptive use limit, the acreage above Pathfinder Dam, when combined with the acreage between Pathfinder Dam and Guernsey Reservoir, cannot exceed the 226,000 acreage limitation pursuant to paragraph II(c). If Nebraska, Wyoming, and the United States agree on a new methodology and a new limit, they shall notify the Court and this paragraph will be modified accordingly. As provided in paragraph XIII, absent agreement on a new methodology and a new limit, Nebraska, Wyoming, or the United States may seek recourse to the Court to resolve these issues.

(c) From diverting or permitting the diversion of water from the North Platte River and its tributaries, including water from hydrologically connected groundwater wells, upstream of Guernsey Reservoir for the intentional irrigation of more than a total of 226,000 acres of land in Wyoming

during any one irrigation season, exclusive of the Kendrick Project. The acres in this area to be counted under this injunction shall include the following, provided that an intentionally irrigated acre that receives water from more than one source shall be counted only once:

(1) Acres irrigated by surface water diversions of natural flow;

(2) Acres irrigated by water stored pursuant to paragraph II(e);

(3) Acres irrigated by water stored in reservoirs that store water from the tributaries between Pathfinder Dam and Guernsey Reservoir;

(4) Acres irrigated with water from hydrologically connected groundwater wells;

(5) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irrigated and that formed the basis for the transfer of water rights where water rights on the North Platte River upstream of Guernsey Reservoir or the tributaries upstream of Pathfinder Dam are transferred after October 8, 1945, from an irrigation use to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that year are less than the total diversion and use allowed by the order approving such transfer;

(6) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irrigated and that formed the basis for the transfer of water rights where water rights on the tributaries entering the North Platte River between Pathfinder Dam and Guernsey Reservoir are transferred after January 1, 2001, from an irrigation use to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that

year are less than the total diversion and use allowed by the order approving such transfer;

Ten years after the entry of this Modified Decree, the provision that enjoins Wyoming from intentionally irrigating more than 226,000 acres upstream of Guernsey Reservoir will be replaced with two injunctions, one that limits the number of acres that can be irrigated above Pathfinder Dam and one that limits the number of acres that can be irrigated between Pathfinder Dam and Guernsey Reservoir. Wyoming has the discretion to designate the irrigated acreage limitation above Pathfinder Dam and the irrigated acreage limitation between Pathfinder Dam and Guernsey Reservoir, so long as the total irrigated acreage limitation does not exceed 226,000 acres. After Wyoming makes such designation, Nebraska, Wyoming, and the United States will so notify the Court and the Modified Decree will be modified accordingly.

(d) From diverting or permitting the diversion of water from the Laramie River and its tributaries, including water from hydrologically connected groundwater wells, downstream of the Wheatland Irrigation District's Tunnel No. 2, exclusive of the area within the Wheatland Irrigation District, for the intentional irrigation of more than a total of 39,000 acres of land in Wyoming during any one irrigation season. The acres in this area to be counted under this injunction shall include the following, provided that an intentionally irrigated acre that receives water from more than one source shall be counted only once:

(1) Acres irrigated by surface water diversions of natural flow;

(2) Acres irrigated by stored irrigation water released from a reservoir;

(3) Acres irrigated with water from hydrologically connected groundwater wells;

(4) The equivalent of the acres found by order of the Wyoming State Board of Control to have been historically irri-

gated and that formed the basis for the transfer of water rights where water rights are transferred after January 1, 2001, from an irrigation use that is subject to the limitations of this paragraph II(d) to another use; provided, however, that the amount of acres counted for a given year may be reduced proportionately to the extent that the actual diversion and use of water under the transferred water right during that year are less than the total diversion and use allowed by the order approving such transfer;

(e) From storing or permitting the storage of more than a total amount of 18,000 acre-feet of water for irrigation purposes from the North Platte River and its tributaries above Pathfinder Reservoir between October 1 of any year and September 30 of the following year, exclusive of Seminoe Reservoir.

III. The State of Wyoming, its officers, attorneys, agents, and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova, and Glendo Reservoirs and the Inland Lakes otherwise than in accordance with the relative storage rights, as among themselves, of such reservoirs, which are hereby defined and fixed as follows:

First, Pathfinder Reservoir;

Second, Inland Lakes with the same priority date as Pathfinder Reservoir;

Third, Guernsey Reservoir;

Fourth, Seminoe Reservoir;

Fifth, Alcova Reservoir; and

Sixth, Glendo Reservoir;

Provided, however, that water accruing in priority to the storage right of a reservoir listed above, and water accruing to the Glendo Reservoir reregulating space pursuant to paragraph XVII(g), may be physically stored in, released from, or exchanged with another reservoir so long as the water is accounted in accordance with the foregoing rule of priority and only when such storage, release, or exchange

will not materially interfere with the administration of water for irrigation purposes according to the priority decreed for the French Canal and the State Line Canals. Further, in accordance with the opinion of this Court dated April 20, 1993 (507 U. S. 584), the United States has the right to divert 46,000 acre-feet of water during the nonirrigation season months of October, November, and April for storage in the Inland Lakes. Historically, pursuant to annual agreements entered in the discretion of the parties, such diversions have occurred at a rate not exceeding 910 cubic feet per second from gains accruing to the river downstream of Alcova Reservoir. This right shall be administered in accordance with procedures to be reviewed and adopted annually by the North Platte Decree Committee.

IV. The State of Wyoming, its officers, attorneys, agents, and employees, be and they are hereby severally enjoined from storing or permitting the storage of water in Pathfinder, Guernsey, Seminoe, Alcova, and Glendo Reservoirs, and from the diversion of natural flow water through the Casper Canal for the Kendrick Project between and including May 1 and September 30 of each year otherwise than in accordance with the rule of priority in relation to the appropriations of the Nebraska lands supplied by the French Canal and by the State Line Canals, which said Nebraska appropriations are hereby adjudged to be senior to said five reservoirs and said Casper Canal, and which said Nebraska appropriations are hereby identified and defined, and their diversion limitations in second feet and seasonal limitations in acre-feet fixed as follows:

Lands	*Canal*	*Limitation in Sec. Feet*	*Seasonal Limitation in Acre-Feet*
Tract of 1,025 acres	French	15	2,227
Mitchell Irrigation District	Mitchell	195	35,000
Gering Irrigation District	Gering	193	36,000
Farmers Irrigation District	Tri-State	748	183,050
Ramshorn Irrigation District	Ramshorn	14	3,000

This paragraph limits the extent to which these canals may stop the federal reservoirs from storing water and the Casper Canal from diverting natural flow water. It does not place any absolute ceilings or other restrictions on the quantities of water that these canals may actually divert. *Nebraska* v. *Wyoming*, 507 U. S., at 603; see also *Nebraska* v. *Wyoming*, 515 U. S., at 10.

V. The natural flow in the Guernsey Dam to Tri-State Dam section between and including May 1 and September 30 of each year, including the contribution of Spring Creek, be and the same hereby is apportioned between Wyoming and Nebraska on the basis of twenty-five per cent to Wyoming and seventy-five per cent to Nebraska, with the right granted Nebraska to designate from time to time the portion of its share which shall be delivered into the Interstate, Fort Laramie, French, and Mitchell Canals for use on the Nebraska lands served by these canals. The natural flow in a portion of certain tributaries and drains as defined in paragraph V(a) shall also be included in the natural flow apportioned by this paragraph. The State of Nebraska, its officers, attorneys, agents, and employees, and the State of Wyoming, its officers, attorneys, agents, and employees, are hereby enjoined and restrained from diversion or use contrary to this apportionment, provided that in the apportionment of water in this section the flow for each day, until ascertainable, shall be assumed to be the same as that of the preceding day, as shown by the measurements and computations for that day. Provided further that:

(a) Diversions under surface water rights for irrigation purposes from those parts of the tributaries and drains to the North Platte River that lie within the area bounded by Whalen Diversion Dam on the west, the Ft. Laramie Canal on the south, the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, excluding the drainage basins of the Laramie River and Horse Creek, shall be administered and accounted as diversions of natural flow

for the purposes of the foregoing percentage apportionment, unless the depletions to the North Platte River resulting from such diversions are replaced. The amount of such depletions, and the method for their replacement in the ordinary course of administration, shall be determined and implemented pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(b) Diversions for irrigation purposes from wells with water right priorities between October 8, 1945, and including December 31, 2000, located within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, shall be regulated as follows: To the extent the pumping of such wells results in depletions to the North Platte River between Whalen Diversion Dam and the state line or to the portions of tributaries described in paragraph V(a) between May 1 and September 30, such depletions shall be replaced or the pumping shall be regulated to prevent such depletions, unless such depletions occur when the natural flow in the Guernsey Dam to Tri-State Diversion Dam reach exceeds irrigation demands in that reach. The amount of such depletions, and the method for their replacement in the ordinary course of administration, shall be determined and implemented pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(c) Diversions for irrigation purposes from wells with water right priorities after December 31, 2000, located within the area bounded by Whalen Diversion Dam on the west, 300 feet south of the Ft. Laramie Canal on the south, one mile north of the Interstate Canal on the north, and the Wyoming-Nebraska state line on the east, shall be regulated or subject to depletion replacement pursuant to procedures that have been approved and adopted in the Final Settlement Stipulation.

(d) The river carriage and reservoir loss calculations established in the Decree of October 8, 1945, have been replaced with administrative procedures attached to the North Platte Decree Committee Charter. These procedures may be modified from time to time by the North Platte Decree Committee.

VI. This Modified Decree is intended to and does deal with and apportion only the natural flow of the North Platte River. Storage water shall not be affected by this Modified Decree, and the owners of rights therein shall be permitted to distribute the same in accordance with any lawful contracts which they may have entered into or may in the future enter into without interference because of this Modified Decree.

VII. Such additional gauging stations and measuring devices at or near the Wyoming-Nebraska state line, if any, as may be necessary for making any apportionment herein decreed, shall be constructed and maintained at the joint and equal expense of Wyoming and Nebraska to the extent that the costs thereof are not paid by others.

VIII. The State of Wyoming, its officers, attorneys, agents, and employees be and they are hereby severally enjoined from diverting or permitting the diversion of water from the North Platte River or its tributaries at or above Alcova Reservoir in lieu of or in exchange for return flow water from the Kendrick Project reaching the North Platte River below Alcova Reservoir.

IX. The State of Wyoming and the State of Colorado be and they are hereby each required to prepare and maintain complete and accurate records of the total area of land irrigated and the storage and exportation of the water of the North Platte River and its tributaries within those portions of their respective jurisdictions covered by the provisions of paragraphs I, II(c), II(d), and II(e). The State of Wyoming is also required to prepare and maintain complete and accurate records of the total consumption of irrigation water in

the portion of its jurisdiction covered by paragraphs II(a) and II(b). The record keeping and reporting required of the State of Wyoming by this paragraph shall be implemented in accordance with procedures that have been approved and adopted in the Final Settlement Stipulation. The records required by this paragraph shall be available for inspection at all reasonable times; provided, however, that such records shall not be required in reference to the water uses permitted by paragraphs X and XII(f).

X. This Modified Decree shall not affect or restrict the use or diversion of water from the North Platte River and its tributaries in Colorado or Wyoming for ordinary and usual domestic, municipal, and stock watering purposes and consumption.

XI. For the purposes of this Modified Decree:

(a) "Season" or "seasonal" refers to the irrigation season, May 1 to September 30, inclusive;

(b) The term "storage water" as applied to releases from reservoirs owned and operated by the United States is defined as any water which is released from reservoirs for use on lands under canals having storage contracts in addition to the water which is discharged through those reservoirs to meet natural flow uses permitted by this Modified Decree;

(c) "Natural flow water" shall be taken as referring to all water in the stream except storage water;

(d) Return flows from the Kendrick Project shall be deemed to be "natural flow water" when they have reached the North Platte River, subject to the same diversion and use as any other natural flow in the stream;

(e) "Hydrologically connected groundwater wells" are defined in procedures attached to the North Platte Decree Committee Charter as Exhibits 4, 6, and 12 approved and adopted in the Final Settlement Stipulation. The North Platte Decree Committee may modify such definition in accordance with the Final Settlement Stipulation.

XII. This Modified Decree shall not affect:

(a) The relative rights of water users within any one of the States who are parties to this suit except as may be otherwise specifically provided herein;

(b) Such claims as the United States has to storage water under Wyoming law nor will the Modified Decree in any way interfere with the ownership and operation by the United States of the various federal storage and power plants, works, and facilities;

(c) The use or disposition of any additional supply or supplies of water that may be imported into the basin of the North Platte River from the watershed of an entirely separate stream or the return flow from any such supply or supplies;

(d) The apportionment heretofore made by this Court between the States of Wyoming and Colorado of the waters of the Laramie River, a tributary of the North Platte River, down to and including the Wheatland Project. The waters of the Laramie River below the Wheatland Project are not apportioned by this Modified Decree. The only existing limitation in this Modified Decree on Wyoming's use of the Laramie River is provided in paragraph II(d);

(e) The apportionment made by the compact between the States of Nebraska and Colorado, apportioning the water of the South Platte River;

(f) Water diverted for de minimis uses, defined as:

(1) Ponds with capacities of twenty acre-feet or less for purposes other than irrigated agriculture;

(2) Wells with capacities less than or equal to twenty-five gallons per minute for a single project for purposes other than irrigated agriculture; and

(3) Miscellaneous uses that withdraw or divert less than fifty acre-feet per year for a single project other than stock watering, domestic or irrigated agriculture.

XIII. Any of the parties may apply at the foot of this Modified Decree for its amendment or for further relief.

Any dispute related to compliance or administration shall be submitted to and addressed by the North Platte Decree Committee before a party may seek leave of the Court to bring such dispute before the Court. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy. Further, the Court retains jurisdiction, upon proper showing, to adjudicate all matters for which authority or responsibility is granted to the North Platte Decree Committee by this Modified Decree or the Final Settlement Stipulation. Matters with reference to which further relief may hereafter be sought shall include, but shall not be limited to, the following:

(a) The question of the applicability and effect of the Act of August 9, 1937 (50 Stat. 564, 595–596), upon the rights of Colorado and its water users;

(b) The question of the effect upon the rights of upstream areas of the construction or threatened construction in downstream areas of any projects not now existing or recognized in this Modified Decree;

(c) The question of the effect of the construction or threatened construction of storage capacity not now existing on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir;

(d) The question of the right to divert at or above the headgate of the Casper Canal any water in lieu of, or in exchange for, any water developed by artificial drainage to the river of sump areas on the Kendrick Project;

(e) Any question relating to the joint operation of Pathfinder, Guernsey, Seminoe, Alcova, and Glendo Reservoirs whenever changed conditions make such joint operation possible;

(f) Any change in conditions making modification of the Modified Decree or the granting of further relief necessary or appropriate;

(g) Failure of the North Platte Decree Committee, or the parties to the North Platte Decree Committee, to act upon, resolve or agree on a matter that has been submitted to the North Platte Decree Committee.

XIV. The costs in the original cause were apportioned and paid pursuant to previous order of this Court. The costs in the present cause and the payment of the fees and expenses of the Special Master have been apportioned and paid according to previous orders of this Court with which the parties agree and the Court hereby confirms.

XV. The clerk of this Court shall transmit to the Governors and Attorneys General of the States of Colorado, Wyoming, and Nebraska, the Solicitor General of the United States of America, and Basin Electric Power Cooperative, copies of this Modified Decree duly authenticated under the seal of this Court.

XVI. Whatever claims or defenses the parties or any of them may have in respect to the application, interpretation, or construction of the Act of August 9, 1937 (50 Stat. 564, 595–596), shall be determined without prejudice to any party arising because of any development of the Kendrick Project occurring subsequent to October 1, 1951.

XVII. The following provisions are effective for the operation of Glendo Dam and Reservoir:

(a) The operation of the Glendo Project shall not impose any demand on areas at or above Seminoe Reservoir which will prejudice any rights that the States of Colorado or Wyoming might have to secure a modification of the Modified Decree permitting an expansion of water uses in the natural basin of the North Platte River in Colorado or above Seminoe Reservoir in Wyoming.

(b) The operation of Glendo Reservoir shall not affect the regime of the natural flow of the North Platte River except that not more than 40,000 acre-feet of the natural flow of the North Platte River and its tributaries which cannot be stored in upstream reservoirs under the provisions of this

Modified Decree may be stored in Glendo Reservoir during any water year for disposition by the United States under contracts, in addition to evaporation losses on such storage, and further, the amount of water that may be held in storage at any one time for disposition by the United States under contracts, including carryover storage, shall never exceed 100,000 acre-feet. Such storage water shall be disposed of in accordance with contracts executed or to be hereafter executed, in compliance with federal law, and may be used for any beneficial purpose in Nebraska within the Platte River basin to the extent of 25,000 acre-feet annually and for any beneficial purpose in Wyoming within the Platte River basin to the extent of 15,000 acre-feet annually. The above limitation on the amount of storage of natural flow does not apply: (1) to flood water which may be temporarily stored in any capacity allocated for flood control in Glendo Reservoir; (2) to water originally stored in Pathfinder Reservoir which may be temporarily re-stored in Glendo Reservoir after its release from Pathfinder and before its delivery pursuant to contract; (3) to Inland Lakes account water temporarily stored in accordance with this Court's Order of April 20, 1993; (4) to water which may be impounded behind Glendo Dam, as provided in the Bureau of Reclamation Definite Plan Report for the Glendo Unit, Wyoming, dated December 1952, as revised through December 1959 (Glendo Definite Plan Report) for the purpose of creating a head for the development of water power; or (5) to water in Glendo Reservoir used for the purposes described in paragraph XVII(g).

(c) Each State may substitute or supplement quantities of storage water obtained under other contractual arrangements with Glendo Reservoir storage supplies. Subject to contractual arrangements with the United States Bureau of Reclamation, including any required compliance with the Endangered Species Act, 16 U. S. C. § 1531 *et seq.*, and the National Environmental Policy Act, 42 U. S. C. § 4321 *et seq.*, each State shall also enjoy unrestricted use of its respective

storage allocation in Glendo Reservoir, so long as the use is below Glendo Reservoir and within the Platte River basin.

(d) Glendo Reservoir storage water may be consumptively used in Wyoming by exchange or other means, upstream of Glendo Reservoir under the terms of this paragraph. For every two acre-feet of Glendo storage water diverted upstream of Glendo Reservoir pursuant to such an exchange, all of which may be fully consumed, an additional acre-foot of Wyoming's Glendo storage allocation shall be contracted at the same time for storage and release from Glendo Reservoir and passed through Guernsey Reservoir to the North Platte River. Except as may be modified in accordance with paragraph XVII(e), or by agreement of the parties, such additional water shall be released from the reservoir at the same time and at a rate proportionate to the diversion of the water contracted for use upstream from Glendo Reservoir during the irrigation season. During the nonirrigation season, due to operational constraints of the outlets at Guernsey Reservoir, such additional water will be held in the Glendo account and released prior to the first of May as may be operationally practical. Except as provided in paragraph XVII(e), once released, such additional water shall be considered natural flow water for purposes of the 75/25 apportionment specified in paragraph V.

(e) If the valid exercise or enforcement of federal law or authority requires Wyoming or a water user within Wyoming to cause the release of a portion of Wyoming's Glendo allocation for environmental purposes downstream of Glendo Reservoir, the additional water contracted and released under paragraph XVII(d) may be dedicated to and used for that purpose. Any water released pursuant to such requirement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

(f) Storage water in Glendo Reservoir from either State's allocation may be used for fish and wildlife purposes downstream of Glendo Reservoir under contractual arrangements with the United States Bureau of Reclamation, subject to approval of Wyoming for contracts for water from Wyoming's storage allocation and subject to approval of Nebraska for contracts for water from Nebraska's storage allocation. Any water released pursuant to such agreement shall not be considered natural flow but shall be administered and protected as storage water in accordance with state law within both Wyoming and Nebraska until used for its intended purposes.

(g) The United States Bureau of Reclamation has the discretion to hold water in Glendo Reservoir in excess of the limitations stated in paragraph XVII(b) in accordance with the operation of the reregulation space in Glendo Reservoir under Permit No. 5998 Res. and Certificate of Construction of Reservoir, as clarified by Order of the Wyoming State Board of Control dated November 29, 2000. Such water may be used, subject to federal law, for the following purposes:

(1) to replace water that passed the Wyoming-Nebraska state line in excess of the amount ordered by canals with storage contracts below the Wyoming-Nebraska state line as the unintended result of physical limitations on the ability to control water deliveries;

(2) to replace evaporation from the storage ownership accounts of Pathfinder Reservoir, Guernsey Reservoir, Seminoe Reservoir, Alcova Reservoir, and Glendo Reservoir; and

(3) to supplement the natural flow that is available for apportionment pursuant to paragraph V.

XVIII. The creation of the North Platte Decree Committee is hereby approved and ratified. Procedures that have been approved and adopted in the Final Settlement Stipulation may be modified from time to time by the North

Platte Decree Committee if the modifications are consistent with the Modified Decree. In the event of a conflict between any procedure, the Final Settlement Stipulation and the Modified Decree, the provisions of this Modified Decree shall control.

Syllabus

CORRECTIONAL SERVICES CORP. *v.* MALESKO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 00–860. Argued October 1, 2001—Decided November 27, 2001

Petitioner Correctional Services Corporation (CSC), under contract with the federal Bureau of Prisons (BOP), operates Le Marquis Community Correctional Center (Le Marquis), a facility that houses federal inmates. After respondent, a federal inmate afflicted with a heart condition limiting his ability to climb stairs, was assigned to a bedroom on Le Marquis' fifth floor, CSC instituted a policy requiring inmates residing below the sixth floor to use the stairs rather than the elevator. Respondent was exempted from this policy. But when a CSC employee forbade respondent to use the elevator to reach his bedroom, he climbed the stairs, suffered a heart attack, and fell. Subsequently, respondent filed this damages action against CSC and individual defendants, alleging, *inter alia*, that they were negligent in refusing him the use of the elevator. The District Court treated the complaint as raising claims under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, in which this Court recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights. In dismissing the suit, the District Court relied on *FDIC* v. *Meyer*, 510 U. S. 471, reasoning, *inter alia*, that a *Bivens* action may only be maintained against an individual, not a corporate entity. The Second Circuit reversed in pertinent part and remanded, remarking, with respect to CSC, that *Meyer* expressly declined to expand the category of defendants against whom *Bivens*-type actions may be brought to include not only federal agents, but also federal agencies. But the court reasoned that such private entities should be held liable under *Bivens* to accomplish the important *Bivens* goal of providing a remedy for constitutional violations.

Held: Bivens' limited holding may not be extended to confer a right of action for damages against private entities acting under color of federal law. The Court's authority to imply a new constitutional tort, not expressly authorized by statute, is anchored in its general jurisdiction to decide all cases arising under federal law. The Court first exercised this authority in *Bivens*. From a discussion of that and subsequent cases, it is clear that respondent's claim is fundamentally different from anything the Court has heretofore recognized. In 30 years of *Bivens* jurisprudence, the Court has extended its holding only twice, to pro-

vide an otherwise nonexistent cause of action against *individual officers* alleged to have acted unconstitutionally, *e. g.*, *Carlson* v. *Green*, 446 U. S. 14, and to provide a cause of action for a plaintiff who lacked *any alternative remedy* for harms caused by an individual officer's unconstitutional conduct, *e. g.*, *Davis* v. *Passman*, 442 U. S. 228, 245. Where such circumstances are not present, the Court has consistently rejected invitations to extend *Bivens*, often for reasons that foreclose its extension here. See, *e. g.*, *Bush* v. *Lucas*, 462 U. S. 367. *Bivens'* purpose is to deter individual federal officers, not the agency, from committing constitutional violations. *Meyer* made clear, *inter alia*, that the threat of suit against an individual's employer was not the kind of deterrence contemplated by *Bivens*. 510 U. S., at 485. This case is, in every meaningful sense, the same. For if a corporate defendant is available for suit, claimants will focus their collection efforts on it, and not the individual directly responsible for the alleged injury. On *Meyer*'s logic, inferring a constitutional tort remedy against a private entity like CSC is therefore foreclosed. Respondent's claim that requiring private corporations acting under color of federal law to pay for the constitutional harms they commit is the best way to discourage future harms has no relevance to *Bivens*, which is concerned solely with deterring individual officers' unconstitutional acts. There is no reason here to consider extending *Bivens* beyond its core premise. To begin with, *no federal prisoners* enjoy respondent's contemplated remedy. If such a prisoner in a BOP facility alleges a constitutional deprivation, his only remedy lies against the offending individual officer. Whether it makes sense to impose asymmetrical liability costs on private prison facilities alone is a question for Congress to decide. Nor is this a situation in which claimants in respondent's shoes lack effective remedies. It was conceded at oral argument that alternative remedies are at least as great, and in many respects greater, than anything that could be had under *Bivens*. For example, federal prisoners in private facilities enjoy a parallel tort remedy that is unavailable to prisoners housed in government facilities. Inmates in respondent's position also have full access to remedial mechanisms established by the BOP, including suits in federal court for injunctive relief—long recognized as the proper means for preventing entities from acting unconstitutionally—and grievances filed through the BOP's Administrative Remedy Program. Pp. 66–74.

229 F. 3d 374, reversed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined, *post*, p. 75. STEVENS, J.,

filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined, *post*, p. 75.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Frank R. Volpe*, *George P. Stasiuk*, and *Karen M. Morinelli*.

Jeffrey A. Lamken argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Underwood*, *Deputy Solicitor General Clement*, *Barbara L. Herwig*, and *Thomas M. Bondy*.

Steven Pasternak argued the cause for respondent. With him on the brief was *David C. Vladeck*.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We decide here whether the implied damages action first recognized in *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), should be extended to allow recovery against a private corporation operating a halfway house under contract with the Bureau of Prisons. We decline to so extend *Bivens*.

Petitioner Correctional Services Corporation (CSC), under contract with the federal Bureau of Prisons (BOP), operates Community Corrections Centers and other facilities that house federal prisoners and detainees.[1] Since the late

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*Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union by *Elizabeth Alexander*, *Margaret Winter*, *David Fathi*, and *Steven R. Shapiro*; and for the Legal Aid Society of the City of New York by *Daniel L. Greenberg* and *John Boston*.

[1] CSC is hardly unique in this regard. The BOP has since 1981 relied exclusively on contracts with private institutions and state and local governments for the operation of halfway house facilities to help federal prisoners reintegrate into society. The BOP contracts not only with for-profit entities like CSC, but also with charitable organizations like Volunteers for America (which operates facilities in Indiana, Louisiana, Maryland, Minnesota, New York, and Texas), the Salvation Army (Arkansas, Florida, Illinois, North Carolina, Tennessee, and Texas), Progress

1980's, CSC has operated Le Marquis Community Correctional Center (Le Marquis), a halfway house located in New York City. Respondent John E. Malesko is a former federal inmate who, having been convicted of federal securities fraud in December 1992, was sentenced to a term of 18 months' imprisonment under the supervision of the BOP. During his imprisonment, respondent was diagnosed with a heart condition and treated with prescription medication. Respondent's condition limited his ability to engage in physical activity, such as climbing stairs.

In February 1993, the BOP transferred respondent to Le Marquis where he was to serve the remainder of his sentence. Respondent was assigned to living quarters on the fifth floor. On or about March 1, 1994, CSC instituted a policy at Le Marquis requiring inmates residing below the sixth floor to use the staircase rather than the elevator to travel from the first-floor lobby to their rooms. There is no dispute that respondent was exempted from this policy on account of his heart condition. Respondent alleges that on March 28, 1994, however, Jorge Urena, an employee of CSC, forbade him to use the elevator to reach his fifth-floor bedroom. Respondent protested that he was specially permitted elevator access, but Urena was adamant. Respondent then climbed the stairs, suffered a heart attack, and fell, injuring his left ear.

Three years after this incident occurred, respondent filed a *pro se* action against CSC and unnamed CSC employees in the United States District Court for the Southern District of New York. Two years later, now acting with counsel, respondent filed an amended complaint which named Urena as 1 of the 10 John Doe defendants. The amended complaint alleged that CSC, Urena, and unnamed defendants were "negligent in failing to obtain requisite medication for [respondent's] condition and were further negligent by refusing

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House Association (Oregon), Triangle Center (Illinois), and Catholic Social Services (Pennsylvania).

[respondent] the use of the elevator." App. 12. It further alleged that respondent injured his left ear and aggravated a pre-existing condition "[a]s a result of the negligence of the Defendants." *Ibid.* Respondent demanded judgment in the sum of $1 million in compensatory damages, $3 million in anticipated future damages, and punitive damages "for such sum as the Court and/or [j]ury may determine." *Id.*, at 13.

The District Court treated the amended complaint as raising claims under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, *supra*, and dismissed respondent's cause of action in its entirety. App. to Pet. for Cert. 20a. Relying on our decision in *FDIC* v. *Meyer*, 510 U. S. 471 (1994), the District Court reasoned that "a *Bivens* action may only be maintained against an individual," and thus was not available against CSC, a corporate entity. App. to Pet. for Cert. 20a. With respect to Urena and the unnamed individual defendants, the complaint was dismissed on statute of limitations grounds.

The Court of Appeals for the Second Circuit affirmed in part, reversed in part, and remanded. 229 F. 3d 374 (2000). That court affirmed dismissal of respondent's claims against individual defendants as barred by the statute of limitations. Respondent has not challenged that ruling, and the parties agree that the question whether a *Bivens* action might lie against a private individual is not presented here. With respect to CSC, the Court of Appeals remarked that *Meyer* expressly declined "'to expand the category of defendants against whom *Bivens*-type actions may be brought to include not only federal agents, but federal agencies as well.'" 229 F. 3d, at 378 (quoting *Meyer*, *supra*, at 484 (emphasis deleted)). But the court reasoned that private entities like CSC should be held liable under *Bivens* to "accomplish the . . . important *Bivens* goal of providing a remedy for constitutional violations." 229 F. 3d, at 380.

We granted certiorari, 532 U. S. 902 (2001), and now reverse.[2]

In *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), we recognized for the first time an implied private action for damages against federal officers alleged to have violated a citizen's constitutional rights. Respondent now asks that we extend this limited holding to confer a right of action for damages against private entities acting under color of federal law. He contends that the Court must recognize a federal remedy at law wherever there has been an alleged constitutional deprivation, no matter that the victim of the alleged deprivation might have alternative remedies elsewhere, and that the proposed remedy would not significantly deter the principal wrongdoer, an individual private employee. We have heretofore refused to imply new substantive liabilities under such circumstances, and we decline to do so here.

Our authority to imply a new constitutional tort, not expressly authorized by statute, is anchored in our general jurisdiction to decide all cases "arising under the Constitution, laws, or treaties of the United States." 28 U. S. C. § 1331. See, *e. g.*, *Schweiker* v. *Chilicky*, 487 U. S. 412, 420–421 (1988); *Bush* v. *Lucas*, 462 U. S. 367, 373–374 (1983). We first exercised this authority in *Bivens*, where we held that a victim of a Fourth Amendment violation by federal officers may bring suit for money damages against the officers in federal court. *Bivens* acknowledged that Congress had never provided for a private right of action against federal

[2] The Courts of Appeals have divided on whether *FDIC* v. *Meyer*, 510 U. S. 471 (1994), forecloses the extension of *Bivens* to private entities. Compare *Hammons* v. *Norfolk Southern Corp.*, 156 F. 3d 701, 705 (CA6 1998) ("Nothing in *Meyer* prohibits a *Bivens* claim against a private corporation that engages in federal action"), with *Kauffman* v. *Anglo-American School of Sofia*, 28 F. 3d 1223, 1227 (CADC 1994) ("[Under] *Meyer's* conclusion that public federal agencies are not subject to *Bivens* liability, it follows that equivalent private entities should not be liable either"). We hold today that it does.

officers, and that "the Fourth Amendment does not in so many words provide for its enforcement by award of money damages for the consequences of its violation." 403 U. S., at 396. Nonetheless, relying largely on earlier decisions implying private damages actions into federal statutes, see *id.*, at 397 (citing *J. I. Case Co.* v. *Borak*, 377 U. S. 426, 433 (1964)); 403 U. S., at 402–403, n. 4 (Harlan, J., concurring in judgment) ("The *Borak* case is an especially clear example of the exercise of federal judicial power to accord damages as an appropriate remedy in the absence of any express statutory authorization of a federal cause of action"), and finding "no special factors counseling hesitation in the absence of affirmative action by Congress," *id.*, at 395–396, we found an implied damages remedy available under the Fourth Amendment.[3]

In the decade following *Bivens*, we recognized an implied damages remedy under the Due Process Clause of the Fifth Amendment, *Davis* v. *Passman*, 442 U. S. 228 (1979), and the Cruel and Unusual Punishments Clause of the Eighth Amendment, *Carlson* v. *Green*, 446 U. S. 14 (1980). In both *Davis* and *Carlson*, we applied the core holding of *Bivens*, recognizing in limited circumstances a claim for money damages against federal officers who abuse their constitutional authority. In *Davis*, we inferred a new right of action chiefly because the plaintiff lacked any other remedy for the alleged constitutional deprivation. 442 U. S., at 245 ("For Davis, as for Bivens, it is damages or nothing"). In *Carlson*, we in-

[3] Since our decision in *Borak*, we have retreated from our previous willingness to imply a cause of action where Congress has not provided one. See, *e. g.*, *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 188 (1994); *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U. S. 11, 15–16 (1979); *Cannon* v. *University of Chicago*, 441 U. S. 677, 688 (1979); *id.*, at 717–718 (REHNQUIST, J., concurring). Just last Term it was noted that we "abandoned" the view of *Borak* decades ago, and have repeatedly declined to "revert" to "the understanding of private causes of action that held sway 40 years ago." *Alexander* v. *Sandoval*, 532 U. S. 275, 287 (2001).

ferred a right of action against individual prison officials where the plaintiff's only alternative was a Federal Tort Claims Act (FTCA) claim against the United States. 446 U. S., at 18–23. We reasoned that the threat of suit against the United States was insufficient to deter the unconstitutional acts of individuals. *Id.*, at 21 ("Because the *Bivens* remedy is recoverable against individuals, it is a more effective deterrent than the FTCA remedy"). We also found it "crystal clear" that Congress intended the FTCA and *Bivens* to serve as "parallel" and "complementary" sources of liability. 446 U. S., at 19–20.

Since *Carlson* we have consistently refused to extend *Bivens* liability to any new context or new category of defendants. In *Bush* v. *Lucas*, *supra*, we declined to create a *Bivens* remedy against individual Government officials for a First Amendment violation arising in the context of federal employment. Although the plaintiff had no opportunity to fully remedy the constitutional violation, we held that administrative review mechanisms crafted by Congress provided meaningful redress and thereby foreclosed the need to fashion a new, judicially crafted cause of action. 462 U. S., at 378, n. 14, 386–388. We further recognized Congress' institutional competence in crafting appropriate relief for aggrieved federal employees as a "special factor counseling hesitation in the creation of a new remedy." *Id.*, at 380. See also *id.*, at 389 (noting that "Congress is in a far better position than a court to evaluate the impact of a new species of litigation between federal employees"). We have reached a similar result in the military context, *Chappell* v. *Wallace*, 462 U. S. 296, 304 (1983), even where the defendants were alleged to have been civilian personnel, *United States* v. *Stanley*, 483 U. S. 669, 681 (1987).

In *Schweiker* v. *Chilicky*, we declined to infer a damages action against individual Government employees alleged to have violated due process in their handling of Social Security applications. We observed that our "decisions have re-

sponded cautiously to suggestions that *Bivens* remedies be extended into new contexts." 487 U. S., at 421. In light of these decisions, we noted that "[t]he absence of statutory relief for a constitutional violation . . . does not by any means necessarily imply that courts should award money damages against the officers responsible for the violation." *Id.*, at 421–422. We therefore rejected the claim that a *Bivens* remedy should be implied simply for want of any other means for challenging a constitutional deprivation in federal court. It did not matter, for example, that "[t]he creation of a *Bivens* remedy would obviously offer the prospect of relief for injuries that must now go unredressed." 487 U. S., at 425. See also *Bush*, *supra*, at 388 (noting that "existing remedies do not provide complete relief for the plaintiff"); *Stanley*, *supra*, at 683 ("[I]t is irrelevant to a special factors analysis whether the laws currently on the books afford Stanley . . . an adequate federal remedy for his injuries" (internal quotation marks omitted)). So long as the plaintiff had an avenue for some redress, bedrock principles of separation of powers foreclosed judicial imposition of a new substantive liability. *Chilicky*, *supra*, at 425–427.

Most recently, in *FDIC* v. *Meyer*, we unanimously declined an invitation to extend *Bivens* to permit suit against a federal agency, even though the agency—because Congress had waived sovereign immunity—was otherwise amenable to suit. 510 U. S., at 484–486. Our opinion emphasized that "the purpose of *Bivens* is to deter *the officer*," not the agency. *Id.*, at 485 (emphasis in original) (citing *Carlson* v. *Green*, *supra*, at 21). We reasoned that if given the choice, plaintiffs would sue a federal agency instead of an individual who could assert qualified immunity as an affirmative defense. To the extent aggrieved parties had less incentive to bring a damages claim against individuals, "the deterrent effects of the *Bivens* remedy would be lost." 510 U. S., at 485. Accordingly, to allow a *Bivens* claim against federal agencies "would mean the evisceration of the *Bivens* remedy,

rather than its extension." 510 U. S., at 485. We noted further that "special factors" counseled hesitation in light of the "potentially enormous financial burden" that agency liability would entail. *Id.*, at 486.

From this discussion, it is clear that the claim urged by respondent is fundamentally different from anything recognized in *Bivens* or subsequent cases. In 30 years of *Bivens* jurisprudence we have extended its holding only twice, to provide an otherwise nonexistent cause of action against *individual officers* alleged to have acted unconstitutionally, or to provide a cause of action for a plaintiff who lacked *any alternative remedy* for harms caused by an individual officer's unconstitutional conduct. Where such circumstances are not present, we have consistently rejected invitations to extend *Bivens*, often for reasons that foreclose its extension here.[4]

The purpose of *Bivens* is to deter individual federal officers from committing constitutional violations. *Meyer* made clear that the threat of litigation and liability will adequately deter federal officers for *Bivens* purposes no matter that they may enjoy qualified immunity, 510 U. S., at 474, 485, are indemnified by the employing agency or entity, *id.*, at 486, or are acting pursuant to an entity's policy, *id.*, at 473–474. *Meyer* also made clear that the threat of suit against an individual's employer was not the kind of deterrence contemplated by *Bivens*. See 510 U. S., at 485 ("If we were to imply a damages action directly against federal agencies . . . there would be no reason for aggrieved parties to bring damages actions against individual officers. [T]he deterrent

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[4] JUSTICE STEVENS' claim that this case does not implicate an "extension" of *Bivens*, *post*, at 76–77, 82 (dissenting opinion), might come as some surprise to the Court of Appeals which twice characterized its own holding as "extending *Bivens* liability to reach private corporations." 229 F. 3d 374, 381 (CA2 2000). See also *ibid.* ("*Bivens* liability should extend to private corporations").

effects of the *Bivens* remedy would be lost"). This case is, in every meaningful sense, the same. For if a corporate defendant is available for suit, claimants will focus their collection efforts on it, and not the individual directly responsible for the alleged injury. See, *e. g.*, *TXO Production Corp.* v. *Alliance Resources Corp.*, 509 U. S. 443, 464 (1993) (plurality opinion) (recognizing that corporations fare much worse before juries than do individuals); *id.*, at 490–492 (O'CONNOR, J., dissenting) (same) (citing authorities). On the logic of *Meyer*, inferring a constitutional tort remedy against a private entity like CSC is therefore foreclosed.

Respondent claims that even under *Meyer*'s deterrence rationale, implying a suit against private corporations acting under color of federal law is still necessary to advance the core deterrence purpose of *Bivens*. He argues that because corporations respond to market pressures and make decisions without regard to constitutional obligations, requiring payment for the constitutional harms they commit is the best way to discourage future harms. That may be so, but it has no relevance to *Bivens*, which is concerned solely with deterring the unconstitutional acts of individual officers. If deterring the conduct of a policymaking entity was the purpose of *Bivens*, then *Meyer* would have implied a damages remedy against the Federal Deposit Insurance Corporation; it was after all an agency policy that led to *Meyer*'s constitutional deprivation. *Meyer*, *supra*, at 473–474. But *Bivens* from its inception has been based not on that premise, but on the deterrence of individual officers who commit unconstitutional acts.

There is no reason for us to consider extending *Bivens* beyond this core premise here.[5] To begin with, *no federal*

[5] JUSTICE STEVENS claims that our holding in favor of CSC portends "tragic consequence[s]," *post*, at 81, and "jeopardize[s] the constitutional rights of . . . tens of thousands of inmates," *ibid.* He refers to examples

prisoners enjoy respondent's contemplated remedy. If a federal prisoner in a BOP facility alleges a constitutional deprivation, he may bring a *Bivens* claim against the offending individual officer, subject to the defense of qualified immunity. The prisoner may not bring a *Bivens* claim against the officer's employer, the United States, or the BOP. With respect to the alleged constitutional deprivation, his only remedy lies against the individual; a remedy *Meyer* found sufficient, and which respondent did not timely pursue. Whether it makes sense to impose asymmetrical liability costs on private prison facilities alone is a question for Congress, not us, to decide.

Nor are we confronted with a situation in which claimants in respondent's shoes lack effective remedies. Cf. *Bivens*, 403 U. S., at 410 (Harlan, J., concurring in judgment) ("For people in Bivens' shoes, it is damages or nothing"); *Davis*, 442 U. S., at 245 ("For Davis, as for Bivens, it is damages or nothing" (internal quotaton marks omitted)). It was conceded at oral argument that alternative remedies are at least as great, and in many respects greater, than anything that could be had under *Bivens*. Tr. of Oral Arg. 41–42, 43. For example, federal prisoners in private facilities enjoy a par-

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of cases suggesting that private correctional providers routinely abuse and take advantage of inmates under their control. *Post*, at 81, n. 9 (citing Brief for Legal Aid Society of City of New York as *Amicus Curiae* 8–25). See also Brief for American Civil Liberties Union as *Amicus Curiae* 14–16, and n. 6 (citing and discussing "abundant" examples of such abuse). In all but one of these examples, however, the private facility in question housed *state* prisoners—prisoners who already enjoy a right of action against private correctional providers under 42 U. S. C. § 1983. If it is true that the imperatives for deterring the unconstitutional conduct of private correctional providers are so strong as to demand that we imply a new right of action directly from the Constitution, then abuses of authority should be *less* prevalent in state facilities, where Congress already provides for such liability. That the trend appears to be just the opposite is not surprising given the BOP's oversight and monitoring of its private contract facilities, see Brief for United States as *Amicus Curiae* 4–5, 24–26, which JUSTICE STEVENS does not mention.

allel tort remedy that is unavailable to prisoners housed in Government facilities. See Brief in Opposition 13. This case demonstrates as much, since respondent's complaint in the District Court arguably alleged no more than a quintessential claim of negligence. It maintained that named and unnamed defendants were "*negligent* in failing to obtain requisite medication . . . and were further *negligent* by refusing . . . use of the elevator." App. 12 (emphasis added). It further maintained that respondent suffered injuries "[a]s a result of the *negligence* of the Defendants." *Ibid.* (emphasis added). The District Court, however, construed the complaint as raising a *Bivens* claim, presumably under the Cruel and Unusual Punishments Clause of the Eighth Amendment. Respondent accepted this theory of liability, and he has never sought relief on any other ground. This is somewhat ironic, because the heightened "deliberate indifference" standard of Eighth Amendment liability, *Estelle* v. *Gamble*, 429 U. S. 97, 104 (1976), would make it considerably more difficult for respondent to prevail than on a theory of ordinary negligence, see, *e. g.*, *Farmer* v. *Brennan*, 511 U. S. 825, 835 (1994) ("[D]eliberate indifference describes a state of mind more blameworthy than negligence").

This also makes respondent's situation altogether different from *Bivens*, in which we found alternative state tort remedies to be "inconsistent or even hostile" to a remedy inferred from the Fourth Amendment. 403 U. S., at 393–394. When a federal officer appears at the door and requests entry, one cannot always be expected to resist. See *id.*, at 394 ("[A] claim of authority to enter is likely to unlock the door"). Yet lack of resistance alone might foreclose a cause of action in trespass or privacy. *Ibid.* Therefore, we reasoned in *Bivens* that other than an implied constitutional tort remedy, "there remain[ed] . . . but the alternative of resistance, which may amount to a crime." *Id.*, at 395 (internal quotation marks and citation omitted). Such logic does not apply to

respondent, whose claim of negligence or deliberate indifference requires no resistance to official action, and whose lack of alternative tort remedies was due solely to strategic choice.[6]

Inmates in respondent's position also have full access to remedial mechanisms established by the BOP, including suits in federal court for injunctive relief and grievances filed through the BOP's Administrative Remedy Program (ARP). See 28 CFR §542.10 (2001) (explaining ARP as providing "a process through which inmates may seek formal review of an issue which relates to any aspect of their confinement"). This program provides yet another means through which allegedly unconstitutional actions and policies can be brought to the attention of the BOP and prevented from recurring. And unlike the *Bivens* remedy, which we have never considered a proper vehicle for altering an entity's policy, injunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally.

In sum, respondent is not a plaintiff in search of a remedy as in *Bivens* and *Davis*. Nor does he seek a cause of action against an individual officer, otherwise lacking, as in *Carlson*. Respondent instead seeks a marked extension of *Bivens*, to contexts that would not advance *Bivens'* core purpose of deterring individual officers from engaging in unconstitutional wrongdoing. The caution toward extending *Bivens* remedies into any new context, a caution consistently and repeatedly recognized for three decades, forecloses such an extension here.

The judgment of the Court of Appeals is reversed.

It is so ordered.

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[6] Where the government has directed a contractor to do the very thing that is the subject of the claim, we have recognized this as a special circumstance where the contractor may assert a defense. *Boyle* v. *United Technologies Corp.*, 487 U. S. 500 (1988). The record here would provide no basis for such a defense.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring.

I join the opinion of the Court because I agree that a narrow interpretation of the rationale of *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), would not logically produce its application to the circumstances of this case. The dissent is doubtless correct that a broad interpretation of its rationale *would* logically produce such application, but I am not inclined (and the Court has not been inclined) to construe *Bivens* broadly.

In joining the Court's opinion, however, I do not mean to imply that, *if* the narrowest rationale of *Bivens did* apply to a new context, I *would* extend its holding. I would not. *Bivens* is a relic of the heady days in which this Court assumed common-law powers to create causes of action—decreeing them to be "implied" by the mere existence of a statutory or constitutional prohibition. As the Court points out, *ante*, at 67, n. 3, we have abandoned that power to invent "implications" in the statutory field, see *Alexander* v. *Sandoval*, 532 U. S. 275, 287 (2001). There is even greater reason to abandon it in the constitutional field, since an "implication" imagined in the Constitution can presumably not even be repudiated by Congress. I would limit *Bivens* and its two follow-on cases (*Davis* v. *Passman*, 442 U. S. 228 (1979), and *Carlson* v. *Green*, 446 U. S. 14 (1980)) to the precise circumstances that they involved.

JUSTICE STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

In *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), the Court affirmatively answered the question that it had reserved in *Bell* v. *Hood*, 327 U. S. 678 (1946): whether a violation of the Fourth Amendment "by *a federal agent* acting under color of his authority gives rise to a cause of action for damages consequent upon his unconstitutional conduct." 403 U. S., at 389 (emphasis added). Nearly a

decade later, in *Carlson* v. *Green*, 446 U. S. 14 (1980), we held that a violation of the Eighth Amendment by federal prison officials gave rise to a *Bivens* remedy despite the fact that the plaintiffs also had a remedy against the United States under the Federal Tort Claims Act (FTCA). We stated: "*Bivens* established that the victims of a constitutional violation by *a federal agent* have a right to recover damages against the official in federal court despite the absence of any statute conferring such a right." 446 U. S., at 18 (emphasis added).

In subsequent cases, we have decided that a *Bivens* remedy is not available for every conceivable constitutional violation.[1] We have never, however, qualified our holding that Eighth Amendment violations are actionable under *Bivens*. See *Farmer* v. *Brennan*, 511 U. S. 825 (1994); *McCarthy* v. *Madigan*, 503 U. S. 140 (1992). Nor have we ever suggested that a category of federal agents can commit Eighth Amendment violations with impunity.

The parties before us have assumed that respondent's complaint has alleged a violation of the Eighth Amendment.[2] The violation was committed by a federal agent—a private corporation employed by the Bureau of Prisons to perform functions that would otherwise be performed by individual employees of the Federal Government. Thus, the question presented by this case is whether the Court should create an exception to the straightforward application of *Bivens* and

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[1] See, *e. g.*, *FDIC* v. *Meyer*, 510 U. S. 471 (1994); *Schweiker* v. *Chilicky*, 487 U. S. 412 (1988); *Bush* v. *Lucas*, 462 U. S. 367 (1983); *Chappell* v. *Wallace*, 462 U. S. 296 (1983).

[2] Although it might have challenged the sufficiency of respondent's constitutional claim, see *ante*, at 72–73, petitioner has not done so. See Tr. of Oral Arg. 55 (acknowledgment by petitioner that the complaint states an Eighth Amendment violation). Its petition for certiorari presented the single question whether a *Bivens* cause of action for damages "should be implied against a private corporation acting under color of federal law." Pet. for Cert. (i).

Carlson, not whether it should extend our cases beyond their "core premise," *ante*, at 71. This point is evident from the fact that prior to our recent decision in *FDIC* v. *Meyer*, 510 U. S. 471 (1994), the Courts of Appeals had consistently and correctly held that corporate agents performing federal functions, like human agents doing so, were proper defendants in *Bivens* actions.[3]

Meyer, which concluded that federal agencies are not suable under *Bivens*, does not lead to the outcome reached by the Court today. In that case, we did not discuss private corporate agents, nor suggest that such agents should be viewed differently from human ones. Rather, in *Meyer*, we drew a distinction between "federal agents" and "an agency of the Federal Government," 510 U. S., at 473. Indeed, our repeated references to the Federal Deposit Insurance Corporation's (FDIC) status as a "federal agency" emphasized the FDIC's affinity to the federal sovereign. We expressed concern that damages sought directly from federal agencies, such as the FDIC, would "creat[e] a potentially enormous financial burden for the Federal Government." *Id.*, at 486. And it must be kept in mind that *Meyer* involved the FDIC's waiver of sovereign immunity, which, had the Court in *Meyer* recognized a cause of action, would have permitted the very sort of lawsuit that *Bivens* presumed impossi-

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[3] See *Schowengerdt* v. *General Dynamics Corp.*, 823 F. 2d 1328 (CA9 1987); *Reuber* v. *United States*, 750 F. 2d 1039 (CADC 1984); *Gerena* v. *Puerto Rico Legal Servs., Inc.*, 697 F. 2d 447 (CA1 1983); *Dobyns* v. *E-Systems, Inc.*, 667 F. 2d 1219 (CA5 1982); *Yiamouyiannis* v. *Chemical Abstracts Serv.*, 521 F. 2d 1392 (CA6 1975).

It is true that one court has overruled its Circuit precedent in light of *Meyer* and held that *Meyer* dictates the exclusion of all corporate entities from *Bivens* liability. *Kauffman* v. *Anglo-American School of Sofia*, 28 F. 3d 1223 (CADC 1994). However, as another court has explained, that conclusion is in no way compelled by *Meyer*. See *Hammons* v. *Norfolk Southern Corp.*, 156 F. 3d 701 (CA6 1998).

ble: "a direct action against the Government." 510 U. S., at 485.[4]

Moreover, in *Meyer*, as in *Bush* v. *Lucas*, 462 U. S. 367 (1983), and *Schweiker* v. *Chilicky*, 487 U. S. 412 (1988), we were not dealing with a well-recognized cause of action. The cause of action alleged in *Meyer* was a violation of procedural due process, and as the *Meyer* Court noted, "a *Bivens* action alleging a violation of the Due Process Clause of the Fifth Amendment may be appropriate in some contexts, but not in others." 510 U. S., at 484, n. 9. Not only is substantive liability assumed in the present case, but respondent's Eighth Amendment claim falls in the heartland of substantive *Bivens* claims.[5]

Because *Meyer* does not dispose of this case, the Court claims that the rationales underlying *Bivens*—namely, lack of alternative remedies and deterrence—are not present in cases in which suit is brought against a private corporation serving as a federal agent. However, common sense, buttressed by all of the reasons that supported the holding in *Bivens*, leads to the conclusion that corporate agents should not be treated more favorably than human agents.

First, the Court argues that respondent enjoys alternative remedies against the corporate agent that distinguish this case from *Bivens*. In doing so, the Court characterizes *Bivens* and its progeny as cases in which plaintiffs lacked *"any alternative remedy," ante*, at 70. In *Bivens*, however, even though the plaintiff's suit against the Federal Gov-

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[4] *Meyer* also did not address the present situation because the Court understood the plaintiff's "real complaint" in that case to be that the individual officers would be shielded by qualified immunity, 510 U. S., at 485, a concern not present in the case before us, see *Richardson* v. *McKnight*, 521 U. S. 399, 412 (1997) (denying qualified immunity to private prison guards in a suit under 42 U. S. C. § 1983).

[5] The Court incorrectly assumes that we are being asked "to imply a new constitutional tort," *ante*, at 66. The tort here is, however, well established; the only question is whether a remedy in damages is available against a limited class of tortfeasors.

ernment under state tort law may have been barred by sovereign immunity, a suit against the officer himself under state tort law was theoretically possible. Moreover, as the Court recognized in *Carlson*, *Bivens* plaintiffs also have remedies available under the FTCA. Thus, the Court is incorrect to portray *Bivens* plaintiffs as lacking any other avenue of relief, and to imply as a result that respondent in this case had a substantially wider array of non-*Bivens* remedies at his disposal than do other *Bivens* plaintiffs.[6] If alternative remedies provide a sufficient justification for closing the federal forum here, where the defendant is a private corporation, the claims against the individual defendants in *Carlson*, in light of the FTCA alternative, should have been rejected as well.[7]

It is ironic that the Court relies so heavily for its holding on this assumption that alternative effective remedies—primarily negligence actions in state court—are available to respondent. See *ante*, at 72–74. Like Justice Harlan, I think it "entirely proper that these injuries be compensable according to uniform rules of federal law, especially in

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[6] The Court recognizes that the question whether a *Bivens* action would lie against the individual employees of a private corporation like Correctional Services Corporation (CSC) is not raised in the present case. *Ante*, at 65. Both CSC and respondent have assumed *Bivens* would apply to these individuals, and the United States as *amicus* maintains that such liability would be appropriate under *Bivens*. It does seem puzzling that *Bivens* liability would attach to the private individual employees of such corporations—*subagents* of the Federal Government—but not to the corporate agents themselves. However, the United States explicitly maintains this to be the case, and the reasoning of the Court's opinion relies, at least in part, on the availability of a remedy against employees of private prisons. Cf. *ante*, at 72 (noting that *Meyer* "found sufficient" a remedy against the individual officer, "*which respondent did not timely pursue*" (emphasis added)).

[7] Although the Court lightly references administrative remedies that might be available to CSC-housed inmates, these are by no means the sort of comprehensive administrative remedies previously contemplated by the Court in *Bush* and *Schweiker*.

light of the very large element of federal law which must in any event control the scope of official defenses to liability." *Bivens*, 403 U. S., at 409 (opinion concurring in judgment). And aside from undermining uniformity, the Court's reliance on state tort law will jeopardize the protection of the full scope of federal constitutional rights. State law might have comparable causes of action for tort claims like the Eighth Amendment violation alleged here, see *ante*, at 73, but other unconstitutional actions by prison employees, such as violations of the Equal Protection or Due Process Clauses, may find no parallel causes of action in state tort law. Even though respondent here may have been able to sue for some degree of relief under state law because his Eighth Amendment claim could have been pleaded as negligence, future plaintiffs with constitutional claims less like traditional torts will not necessarily be so situated.[8]

Second, the Court claims that the deterrence goals of *Bivens* would not be served by permitting liability here. *Ante*, at 71 (citing *Meyer*). It cannot be seriously maintained, however, that tort remedies against corporate employers have less deterrent value than actions against their

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[8] The Court blames respondent, who filed his initial complaint *pro se*, for the lack of state remedies in this case; according to the Court, respondent's failure to bring a negligence suit in state court was "due solely to strategic choice," *ante*, at 74. Such strategic behavior, generally speaking, is imaginable, but there is no basis in the case before us to charge respondent with acting strategically. Cf. *ante*, at 73 (discussing how proving a federal constitutional claim would be "considerably more difficult" than proving a state negligence claim). Respondent filed his complaint in federal court because he believed himself to have been severely maltreated while in federal custody, and he had no legal counsel to advise him to do otherwise. Without the aid of counsel, respondent not only failed to file for state relief, but he also failed to name the particular prison guard who was responsible for his injuries, resulting in the eventual dismissal of the claims against the individual officers as time barred. Respondent may have been an unsophisticated plaintiff, or, at worst, not entirely diligent about determining the identify of the guards, but it can hardly be said that "strategic choice" was the driving force behind respondent's litigation behavior.

employees. As the Court has previously noted, the "organizational structure" of private prisons "is one subject to the ordinary competitive pressures that normally help private firms adjust their behavior in response to the incentives that tort suits provide—pressures not necessarily present in government departments." *Richardson* v. *McKnight*, 521 U. S. 399, 412 (1997). Thus, the private corporate entity at issue here is readily distinguishable from the federal agency in *Meyer*. Indeed, a tragic consequence of today's decision is the clear incentive it gives to corporate managers of privately operated custodial institutions to adopt cost-saving policies that jeopardize the constitutional rights of the tens of thousands of inmates in their custody.[9]

The Court raises a concern with imposing "asymmetrical liability costs on private prison facilities," *ante*, at 72, and further claims that because federal prisoners in Government-run institutions can only sue officers, it would be unfair to permit federal prisoners in private institutions to sue an "officer's employer," *ibid.* Permitting liability in the present case, however, would *produce* symmetry: both private and public prisoners would be unable to sue the principal (*i. e.*, the Government), but would be able to sue the primary federal agent (*i. e.*, the Government official or the corporation). Indeed, it is the *Court's* decision that creates asymmetry—between federal and state prisoners housed in private correctional facilities. Under 42 U. S. C. § 1983, a state prisoner may sue a private prison for deprivation of constitutional rights, see *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922, 936–937 (1982) (permitting suit under

[9] As *amici* for respondent explain, private prisons are exempt from much of the oversight and public accountability faced by the Bureau of Prisons, a federal entity. See, *e. g.*, Brief for Legal Aid Society of the City of New York as *Amicus Curiae* 8–25. Indeed, because a private prison corporation's first loyalty is to its stockholders, rather than the public interest, it is no surprise that cost-cutting measures jeopardizing prisoners' rights are more likely in private facilities than in public ones.

§ 1983 against private corporations exercising "state action"), yet the Court denies such a remedy to that prisoner's federal counterpart. It is true that we have never expressly held that the contours of *Bivens* and § 1983 are identical. The Court, however, has recognized sound jurisprudential reasons for parallelism, as different standards for claims against state and federal actors "would be incongruous and confusing." *Butz* v. *Economou*, 438 U. S. 478, 499 (1978) (internal quotation marks omitted); cf. *Bolling* v. *Sharpe*, 347 U. S. 497, 500 (1954) ("In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government"). The value of such parallelism was in fact furthered by *Meyer*, since § 1983 would not have provided the plaintiff a remedy had he pressed a similar claim against a state agency.

It is apparent from the Court's critical discussion of the thoughtful opinions of Justice Harlan and his contemporaries, *ante*, at 66–67, and n. 3, and from its erroneous statement of the question presented by this case as whether *Bivens* "should be extended" to allow recovery against a private corporation employed as a federal agent, *ante*, at 63, that the driving force behind the Court's decision is a disagreement with the holding in *Bivens* itself.[10] There are at least two reasons why it is improper for the Court to allow its decision in this case to be influenced by that predisposi-

[10] See also *ante*, at 75 (SCALIA, J., concurring) (arguing that *Bivens* is a "relic of . . . heady days" and should be limited, along with *Carlson* v. *Green*, 446 U. S. 14 (1980), and *Davis* v. *Passman*, 442 U. S. 228 (1979), to its facts). Such hostility to the core of *Bivens* is not new. See, *e. g.*, *Carlson*, 446 U. S., at 32 (REHNQUIST, J., dissenting) ("[T]o dispose of this case as if *Bivens* were rightly decided would in the words of Mr. Justice Frankfurter be to start with an 'unreality' "). Nor is there anything new in the Court's disregard for precedent concerning well-established causes of action. See *Alexander* v. *Sandoval*, 532 U. S. 275, 294–297 (2001) (STEVENS, J., dissenting).

tion. First, as is clear from the legislative materials cited in *Carlson*, 446 U. S., at 19–20, see also *ante*, at 68, Congress has effectively ratified the *Bivens* remedy; surely Congress has never sought to abolish it. Second, a rule that has been such a well-recognized part of our law for over 30 years should be accorded full respect by the Members of this Court, whether or not they would have endorsed that rule when it was first announced. For our primary duty is to apply and enforce settled law, not to revise that law to accord with our own notions of sound policy.

I respectfully dissent.

Syllabus

CHICKASAW NATION *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 00–507. Argued October 2, 2001—Decided November 27, 2001*

The Indian Gaming Regulatory Act (Gaming Act) provides, as relevant here, that Internal Revenue Code (Code) provisions "(including [§§]1441, 3402(q), 6041, and 6050I, and chapter 35 . . .) concerning the reporting and withholding of taxes" with respect to gambling operations shall apply to Indian tribes in the same way as they apply to States. 25 U. S. C. § 2719(d)(1). Chapter 35 *imposes* taxes from which it exempts certain state-controlled gambling activities, but says nothing about tax *reporting* or *withholding*. Petitioners, the Choctaw and Chickasaw Nations, claim that the Gaming Act subsection's explicit parenthetical reference exempts them from paying those chapter 35 taxes from which the States are exempt. Rejecting that claim, the Tenth Circuit held that the subsection applies only to Code provisions concerning tax withholding and reporting.

Held: Section 2719(d)(1) does not exempt tribes from paying the gambling-related taxes that chapter 35 imposes. Pp. 88–95.

(a) The subsection's language outside the parenthetical says that the subsection applies to Code provisions concerning reporting and withholding, and the other four parenthetical references arguably concern reporting and withholding. The Tribes nonetheless claim that the subsection's explicit parenthetical reference to chapter 35 expands the Gaming Act's scope beyond reporting and withholding provisions—to the tax-imposing provisions that chapter 35 contains—and at the very least gives the subsection an ambiguity that can be resolved by applying the canon that statutes are to be construed liberally in favor of Indians with ambiguous provisions interpreted to their benefit. Rejecting their argument reduces the chapter 35 phrase to surplusage, but there is no other reasonable reading of the statute. Pp. 88–89.

(b) The statute's language is too strong to give the chapter 35 reference independent operative effect. The unambiguous language outside the parenthetical says without qualification that the subsection applies to "provisions . . . concerning the reporting and withholding of taxes"; and the language inside the parenthetical, prefaced with the word "in-

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*Together with *Choctaw Nation of Oklahoma* v. *United States* (see this Court's Rule 12.4), also on certiorari to the same court.

cluding," literally says the same, since to "include" means to "contain." The use of parentheses emphasizes the fact that that which is within is meant simply to be illustrative. To give the chapter 35 reference independent operative effect would require seriously rewriting the rest of the statute. One would have to read "including" to mean what it does not mean, namely, "including . . . and." To read the language outside the parenthetical as if it referred to (1) Code provisions concerning tax reporting and withholding and (2) those "concerning . . . wagering operations" would be far too convoluted to believe Congress intended it. There is no reason to think Congress intended to sweep within the subsection's scope every Code provision concerning wagering. The subject matter at issue—tax exemption—also counsels against accepting the Tribes' interpretation. This Court can find no comparable instance in which Congress legislated an exemption through a parenthetical numerical cross-reference. Since the more plausible role for the parenthetical to play in this subsection is that of providing an illustrative list of examples, common sense suggests that "chapter 35" is simply a bad example that Congress included inadvertently, a drafting mistake. Pp. 89–91.

(c) The Gaming Act's legislative history on balance supports this Court's conclusion. And the canons of interpretation to which the Tribes point—that every clause and word of a statute should be given effect and that statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit—do not determine how to read this statute. First, the canons are guides that need not be conclusive. *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 115. To accept these canons as conclusive here would produce an interpretation that the Court firmly believes would conflict with congressional intent. Second, specific canons are often countered by some maxim pointing in a different direction. *Ibid.* The canon requiring a court to give effect to each word "if possible" is sometimes offset by the canon permitting a court to reject words as mere surplusage if inadvertently inserted or if repugnant to the rest of the statute. Moreover, the pro-Indian canon is offset by the canon warning against interpreting federal statutes as providing tax exemptions unless the exemptions are clearly expressed. Given the individualized nature of this Court's previous cases, one cannot say that the pro-Indian canon is inevitably stronger, particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. Pp. 91–95.

208 F. 3d 871 (first judgment); 210 F. 3d 389 (second judgment), affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, and GINSBURG, JJ., joined, and in which

SCALIA and THOMAS, JJ., joined as to all but Part II–B. O'CONNOR, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, p. 96.

Graydon Dean Luthey, Jr., argued the cause for petitioners. With him on the briefs were *Stephen W. Ray, Bob W. Rabon*, and *Dennis W. Arrow.*

Edward C. DuMont argued the cause for the United States. With him on the brief were *Solicitor General Olson, Acting Assistant Attorney General Fallon, Deputy Solicitor General Wallace, Gary R. Allen*, and *David English Carmack.*†

JUSTICE BREYER delivered the opinion of the Court.*

In these cases we must decide whether a particular subsection in the Indian Gaming Regulatory Act, 102 Stat. 2467–2486, 25 U. S. C. §§ 2701–2721 (1994 ed.), exempts tribes from paying the gambling-related taxes that chapter 35 of the Internal Revenue Code imposes—taxes that States need not pay. We hold that it does not create such an exemption.

I

The relevant Indian Gaming Regulatory Act (Gaming Act) subsection, as codified in 25 U. S. C. § 2719(d)(1), reads as follows:

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†Briefs of *amici curiae* urging reversal were filed for the San Carlos Apache Tribe by *Richard T. Treon;* for the San Manuel Band of Serrano Mission Indians by *Jerome L. Levine* and *Frank R. Lawrence;* for the Seminole Tribe of Florida et al. by *Hans Walker, Jr.*, and *Judith A. Shapiro;* and for the Shakopee Mdewakanton Sioux (Dakota) Community et al. by *Mark J. Streitz* and *Michael J. Wahoske.*

Briefs of *amici curiae* urging affirmance were filed for the town of Ledyard, Connecticut, et al. by *Benjamin S. Sharp, Guy R. Martin*, and *Donald C. Mitchell.*

Briefs of *amici curiae* were filed for the Lower Sioux Indian Community in Minnesota et al. by *James M. Schoessler, Henry M. Buffalo, Jr., Mark A. Anderson*, and *Dennis J. Peterson;* and for the Muscogee (Creek) Nation by *L. Susan Work.*

*JUSTICE SCALIA and JUSTICE THOMAS join all but Part II–B of this opinion.

> "The provisions of [the Internal Revenue Code of 1986] (including sections 1441, 3402(q), 6041, and 6050I, and chapter 35 of such [Code]) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this chapter, or under a Tribal-State compact entered into under section 2710(d)(3) of this title that is in effect, in the same manner as such provisions apply to State gaming and wagering operations."

The subsection says that Internal Revenue Code provisions that "concer[n] the reporting and withholding of taxes" with respect to gambling operations shall apply to Indian tribes in the same way as they apply to States. The subsection also says in its parenthetical that those provisions "includ[e]" Internal Revenue Code "chapter 35." Chapter 35, however, says nothing about the *reporting* or the *withholding* of taxes. Rather, that chapter simply *imposes* taxes—excise taxes and occupational taxes related to gambling—from which it exempts certain state-controlled gambling activities. See, *e. g.*, 26 U. S. C. § 4401(a) (1994 ed.) (imposing 0.25% excise tax on each wager); § 4411 (imposing $50 occupational tax on each individual engaged in wagering business); § 4402(3) (exempting state-operated gambling operations, such as lotteries).

In this lawsuit two Native American Indian Tribes, the Choctaw and Chickasaw Nations, claim that the Gaming Act subsection exempts them from paying those chapter 35 taxes from which States are exempt. Brief for Petitioners 34–36. They rest their claim upon the subsection's explicit parenthetical reference to chapter 35. The Tenth Circuit rejected their claim on the ground that the subsection, despite its parenthetical reference, applies only to Code provisions that concern the "reporting and withholding of taxes." 208 F. 3d 871, 883–884 (2000); see also 210 F. 3d 389 (2000). The Court of Appeals for the Federal Circuit, however, reached the

opposite conclusion. *Little Six, Inc.* v. *United States*, 210 F. 3d 1361, 1366 (2000). We granted certiorari in order to resolve the conflict. We agree with the Tenth Circuit.

II

The Tribes' basic argument rests upon the subsection's explicit reference to "chapter 35"—contained in a parenthetical that refers to four other Internal Revenue Code provisions as well. The subsection's language outside the parenthetical says that the subsection applies to those Internal Revenue Code provisions that concern "reporting and withholding." The other four parenthetical references are to provisions that concern, or at least arguably concern, reporting and withholding. See 26 U. S. C. § 1441 (1994 ed. and Supp. V) (withholding of taxes for nonresident alien); § 3402(q) (withholding of taxes from certain gambling winnings); § 6041 (reporting by businesses of payments, including payments of gambling winnings, to others); § 6050I (reporting by businesses of large cash receipts, arguably applicable to certain gambling winnings or receipts).

But what about chapter 35? The Tribes correctly point out that chapter 35 has nothing to do with "reporting and withholding." Brief for Petitioners 28–29. They add that the reference must serve some purpose, and the only purpose that the Tribes can find is that of expanding the scope of the Gaming Act's subsection beyond reporting and withholding provisions—to the tax-imposing provisions that chapter 35 does contain. The Gaming Act therefore must exempt them (like States) from those tax payment requirements. The Tribes add that at least the reference to chapter 35 makes the subsection ambiguous. And they ask us to resolve the ambiguity by applying a special Indian-related interpretative canon, namely, "'statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'" *Id.*, at 13 (quoting *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 766 (1985)).

We cannot accept the Tribes' claim. We agree with the Tribes that rejecting their argument reduces the phrase "(including . . . chapter 35) . . ." to surplusage. Nonetheless, we can find no other reasonable reading of the statute.

A

The language of the statute is too strong to bend as the Tribes would wish—*i. e.*, so that it gives the chapter 35 reference independent operative effect. For one thing, the language outside the parenthetical is unambiguous. It says without qualification that the subsection applies to "provisions . . . concerning the reporting and withholding of taxes." And the language inside the parenthetical, prefaced with the word "including," literally says the same. To "include" is to "contain" or "comprise as part of a whole." Webster's Ninth New Collegiate Dictionary 609 (1985). In this instance that which "contains" the parenthetical references—the "whole" of which the references are "parts"—is the phrase "provisions . . . concerning the reporting and withholding of taxes . . . ." The use of parentheses emphasizes the fact that that which is within is meant simply to be illustrative, hence redundant—a circumstance underscored by the lack of any suggestion that Congress intended the illustrative list to be complete. Cf. 26 U. S. C. § 3406 (1994 ed.) (backup withholding provision not mentioned in parenthetical).

Nor can one give the chapter 35 reference independent operative effect without seriously rewriting the language of the rest of the statute. One would have to read the word "including" to mean what it does not mean, namely, "including . . . and." One would have to read the statute as if, for example, it placed "chapter 35" outside the parenthetical and said "provisions of the . . . Code *including chapter 35 and also provisions* . . . concerning the reporting and withholding of taxes . . . ." Or, one would have to read the language as if it said "provisions of the . . . Code . . . concerning *the taxation and* the reporting and withholding of taxes . . . ."

We mention this latter possibility because the congressional bill that became the law before us once did read that way. But when the bill left committee, it contained not the emphasized words ("the taxation and") but the cross-reference to chapter 35.

We recognize the Tribes' claim (made here for the first time) that one could avoid rewriting the statute by reading the language outside the parenthetical as if it referred to two kinds of "provisions of the . . . Code": first, those "concerning the reporting and withholding of taxes with respect to the winnings from gaming," and, second, those "concerning . . . wagering operations." See Reply Brief for Petitioners 8–10. The subsection's grammar literally permits this reading. But that reading, even if ultimately comprehensible, is far too convoluted to believe Congress intended it. Nor is there any reason to think Congress intended to sweep within the subsection's scope every Internal Revenue Code provision concerning wagering—a result that this unnatural reading would accomplish.

The subject matter at issue also counsels against accepting the Tribes' interpretation. That subject matter is tax exemption. When Congress enacts a tax exemption, it ordinarily does so explicitly. We can find no comparable instance in which Congress legislated an exemption through an inexplicit numerical cross-reference—especially a cross-reference that might easily escape notice.

As we have said, the more plausible role for the parenthetical to play in this subsection is that of providing an illustrative list of examples. So considered, "chapter 35" is simply a bad example—an example that Congress included inadvertently. The presence of a bad example in a statute does not warrant rewriting the remainder of the statute's language. Nor does it necessarily mean that the statute is ambiguous, *i. e.*, "capable of being understood in two or more possible senses or ways." Webster's Ninth New Collegiate Dictionary 77 (1985). Indeed, in ordinary

life, we would understand an analogous instruction—say, "Test drive some cars, including Plymouth, Nissan, Chevrolet, Ford, and Kitchenaid"—not as creating ambiguity, but as reflecting a mistake. Here too, in context, common sense suggests that the cross-reference is simply a drafting mistake, a failure to delete an inappropriate cross-reference in the bill that Congress later enacted into law. Cf. *Little Six, Inc.* v. *United States*, 229 F. 3d 1383, 1385 (CA Fed. 2000) (Dyk, J., dissenting from denial of rehearing en banc) ("The language of the provision has all the earmarks of a simple mistake in legislative drafting").

B

The Gaming Act's legislative history on balance supports our conclusion. The subsection as it appeared in the original Senate bill applied both to taxation and to reporting and withholding. It read as follows:

> "Provisions of the Internal Revenue Code . . . concerning *the taxation and* the reporting and withholding of taxes with respect to gambling or wagering operations shall apply to Indian gaming operations . . . the same as they apply to State operations." S. 555, 100th Cong., 1st Sess., 37 (1987).

With the "taxation" language present, it would have made sense to include chapter 35, which concerns taxation, in a parenthetical that included other provisions that concern reporting and withholding. But the Senate committee deleted the taxation language. Why did it permit the cross-reference to chapter 35 to remain? Committee documents do not say.

The Tribes argue that the committee intentionally left it in the statute in order to serve as a *substitute* for the word "taxation." An *amicus* tries to support this view by pointing to a tribal representative's testimony that certain Tribes were "opposed to any indication where Internal Revenue

would be collecting taxes from the tribal bingo operations." Hearings on S. 555 and S. 1303 before the Senate Select Committee on Indian Affairs, 100th Cong., 1st Sess., 109 (1987) (statement of Lionel John, Executive Director of United South and Eastern Tribes). Other Tribes thought the "taxation" language too "vague," preferring a clear statement "that the Internal Revenue Service is not being granted authority to tax tribes." *Id.*, at 433, 435 (statement of Charles W. Blackwell, Representative of the American Indian Tribal Government and Policy Consultants, Inc.).

Substitution of "chapter 35" for the word "taxation," however, could not have served the tribal witnesses purposes, for doing so took from the bill the very words that made clear the tribes would *not* be taxed and substituted language that made it more likely they would be taxed. Nor can we believe that anyone seeking to grant a tax exemption would intentionally substitute a confusion-generating numerical cross-reference, see Part II–A, *supra*, for pre-existing language that unambiguously carried out that objective. It is far easier to believe that the drafters, having included the entire parenthetical while the word "taxation" was still part of the bill, unintentionally failed to remove what had become a superfluous numerical cross-reference—particularly since the tax-knowledgeable Senate Finance Committee never received the opportunity to examine the bill. Cf. S. Doc. No. 100–1, Senate Manual 30 (1987) (proposed legislation concerning revenue measures shall be referred to the Committee on Finance).

Finally, the Tribes point to a letter written by one of the Gaming Act's authors, stating that "by including reference to Chapter 35," Congress intended "that the tax treatment of wagers conducted by tribal governments be the same as that for wagers conducted by state governments under Chapter 35." App. to Pet. for Cert. 113a. This letter, however, was written after the event. It expresses the views of only one member of the committee. And it makes no

effort to explain the critical legislative circumstance, namely, the elimination of the word "taxation" from the bill. The letter may express the Senator's interpretive preference, but that preference cannot overcome the language of the statute and the related considerations we have discussed. See *Heintz* v. *Jenkins*, 514 U. S. 291, 298 (1995) (A "statement [made] not during the legislative process, but *after* the statute became law . . . is not a statement upon which other legislators might have relied in voting for or against the Act, but it simply represents the views of one informed person on an issue about which others may (or may not) have thought differently"). Cf. *New York Telephone Co.* v. *New York State Dept. of Labor*, 440 U. S. 519, 564, n. 18 (1979) (Powell, J., dissenting) ("The comments . . . of a single Congressman, delivered long after the original passage of the [act at issue], are of no aid in determining congressional intent . . .").

In sum, to adopt the Tribes' interpretation would read back into the Act the very word "taxation" that the Senate committee deleted. We ordinarily will not assume that Congress intended "'to enact statutory language that it has earlier discarded in favor of other language.'" *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 443 (1987) (quoting *Nachman Corp.* v. *Pension Benefit Guaranty Corporation*, 446 U. S. 359, 392–393 (1980)); *Gulf Oil Corp.* v. *Copp Paving Co.*, 419 U. S. 186, 200 (1974) (same); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 157 (1973) (same). There is no special reason for doing so here.

C

The Tribes point to canons of interpretation that favor their position. The Court has often said that "'every clause and word of a statute'" should, "'if possible,'" be given "'effect.'" *United States* v. *Menasche*, 348 U. S. 528, 538–539 (1955) (quoting *Montclair* v. *Ramsdell*, 107 U. S. 147, 152 (1883)). The Tribes point out that our interpretation deprives the words "chapter 35" of any effect. The Court has also said that "statutes are to be construed liberally in favor

of the Indians with ambiguous provisions interpreted to their benefit." *Montana* v. *Blackfeet Tribe*, 471 U. S., at 766; *South Carolina* v. *Catawba Tribe, Inc.*, 476 U. S. 498, 520 (1986) (Blackmun, J., dissenting). The Tribes point out that our interpretation is not to the Indians' benefit.

Nonetheless, these canons do not determine how to read this statute. For one thing, canons are not mandatory rules. They are guides that "need not be conclusive." *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 115 (2001). They are designed to help judges determine the Legislature's intent as embodied in particular statutory language. And other circumstances evidencing congressional intent can overcome their force. In this instance, to accept as conclusive the canons on which the Tribes rely would produce an interpretation that we conclude would conflict with the intent embodied in the statute Congress wrote. Cf. *Choteau* v. *Burnet*, 283 U. S. 691 (1931) (upholding taxation where congressional intent reasonably clear); *Superintendent of Five Civilized Tribes* v. *Commissioner*, 295 U. S. 418 (1935) (same); *Mescalero Apache Tribe* v. *Jones*, *supra* (same). In light of the considerations discussed earlier, we cannot say that the statute is "fairly capable" of two interpretations, cf. *Montana* v. *Blackfeet Tribe*, *supra*, at 766, nor that the Tribes' interpretation is fairly "possible."

Specific canons "are often countered . . . by some maxim pointing in a different direction." *Circuit City Stores, Inc.* v. *Adams*, *supra*, at 115. The canon requiring a court to give effect to each word "*if possible*" is sometimes offset by the canon that permits a court to reject words "as surplusage" if "inadvertently inserted or if repugnant to the rest of the statute . . . ." K. Llewellyn, The Common Law Tradition 525 (1960). And the latter canon has particular force here where the surplus words consist simply of a numerical cross-reference in a parenthetical. Cf. *Cabell Huntington Hospital, Inc.* v. *Shalala*, 101 F. 3d 984, 990 (CA4 1996)

("A parenthetical is, after all, a parenthetical, and it cannot be used to overcome the operative terms of the statute").

Moreover, the canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed. See *United States* v. *Wells Fargo Bank*, 485 U. S. 351, 354 (1988) ("[E]xemptions from taxation . . . must be unambiguously proved"); *Squire* v. *Capoeman*, 351 U. S. 1, 6 (1956) ("[T]o be valid, exemptions to tax laws should be clearly expressed"); *United States Trust Co.* v. *Helvering*, 307 U. S. 57, 60 (1939) ("Exemptions from taxation do not rest upon implication"). Nor can one say that the pro-Indian canon is inevitably stronger—particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. Cf. *post*, at 100 (O'CONNOR, J., dissenting). This Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength. Compare, *e. g.*, *Choate* v. *Trapp*, 224 U. S. 665, 675–676 (1912) (interpreting statement in treaty-related Indian land patents that land is "nontaxable" as creating property right invalidating later congressional effort to tax); *Squire*, *supra*, at 3 (Indian canon offsetting tax canon when related statutory provision and history make clear that language freeing Indian land "'of all charge or incumbrance whatsoever'" includes tax); *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 174 (1973) (state tax violates principle of Indian sovereignty embodied in treaty), with *Mescalero*, *supra* (relying on tax canon to find Indians taxable); *Choteau*, *supra* (language makes clear no exemption); *Five Tribes*, *supra* (same).

Consequently, the canons here cannot make the difference for which the Tribes argue. We conclude that the judgments of the Tenth Circuit must be affirmed.

It is so ordered.

JUSTICE O'CONNOR, with whom JUSTICE SOUTER joins, dissenting.

The Court today holds that 25 U. S. C. § 2719(d) (1994 ed.) clearly and unambiguously fails to give Indian Nations (Nations) the exemption from federal wagering excise and related occupational taxes enjoyed by the States. Because I believe § 2719(d) is subject to more than one interpretation, and because "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit," *Montana* v. *Blackfeet Tribe*, 471 U. S. 759, 766 (1985), I respectfully dissent.

I

I agree with the Court that § 2719(d) incorporates an error in drafting. I disagree, however, that the section's reference to chapter 35 is necessarily that error.

As originally proposed in the Senate, the bill that became the Indian Gaming Regulatory Act (IGRA) would have applied all gambling and wagering-related sections of the Internal Revenue Code to the Nations in the same manner as the States:

> "Provisions of the Internal Revenue Code of 1986, concerning the taxation and the reporting and withholding of taxes with respect to gambling or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act the same as they apply to State operations." S. 555, 100th Cong., 1st Sess., 37 (1987).

The Senate Indian Affairs Committee altered the language of this bill in two contradictory ways. It restricted the applicable Code sections to those relating to the "reporting and withholding of taxes with respect to the winnings" from gaming operations. 25 U. S. C. § 2719(d). It also added a parenthetical listing specific Code sections to be applied to the Nations in the same manner as the States, including

chapter 35, a Code provision that relates to gambling operations generally, but not to the reporting and withholding of gambling winnings. *Ibid.*

One of these two changes must have been made in error. There is no reason to assume, however, that it must have been the latter. It is equally likely that Congress intended § 2719(d) to apply chapter 35 to the Nations, but adopted too restrictive a general characterization of the applicable sections.

The Court can do no more than speculate that the bill's drafters included the parenthetical while the original restriction was in place and failed to remove it when that restriction was altered. See *ante*, at 92. Both the inclusion of the parenthetical and the alteration of the restriction occurred in the Senate committee, S. Rep. No. 100–446 (1988), and there is no way to determine the order in which they were adopted. If the parenthetical was added after the restriction, one could just as easily characterize the *restriction* as an unintentional holdover from a previous version of the bill.

True, reading the statute to grant the Nations the exemption requires the section's reference to the "reporting and withholding of taxes with respect to the winnings" from gaming operations to sustain a meaning the words themselves cannot bear. But the Court's reading of the statute fares no better: It requires excising from § 2719(d) Congress' explicit reference to chapter 35. This goes beyond treating statutory language as mere surplusage. See *Potter* v. *United States*, 155 U. S. 438, 446 (1894) (the presence of statutory language "cannot be regarded as mere surplusage; it means something"); cf. *ante*, at 89. Surplusage is redundant statutory language, *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 697–698 (1995); W. Popkin, Materials on Legislation: Political Language and the Political Process 214 (3d ed. 2001)—the Court's reading

negates language that undeniably bears separate meaning. This is not a step to be undertaken lightly.

Both approaches therefore require rewriting the statute, see *ante*, at 89. Neither of these rewritings is necessarily more "serious" than the other: At most, each involves doing no more than reversing a change made in committee. Cf. *ante*, at 90.

The Court argues that, because the reference to chapter 35 occurs in a parenthetical, negating this language does less damage to the statute than concluding that the restrictive language outside the parenthetical is too narrowly drawn. I am aware of no generally accepted canon of statutory construction favoring language outside of parentheses to language within them, see, *e. g.*, W. Eskridge, P. Frickey, & E. Garrett, Legislation and Statutory Interpretation, App. C (2000) (listing canons), nor do I think it wise for the Court to adopt one today. The importance of statutory language depends not on its punctuation, but on its meaning. See *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 454 (1993) ("[A] purported plain-meaning analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning").

The fact that the parenthetical is illustrative does not change the analysis: If Congress' illustration does not match its general description, there is as much reason to question the description as the illustration. Where another general description is possible—and was in fact part of the bill at an earlier stage—Congress' choice of an example that matches the earlier description is at least ambiguous. Moreover, as § 2719(d)'s parenthetical specifically lists statutory sections to be applied to the Nations, one might in fact conclude that the doctrine that the specific governs the general, *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437, 445 (1987), makes this specific parenthetical even more significant than the general restriction that follows.

Nor is negating Congress' clear reference to chapter 35 required by the policy behind the statute. If anything, congressional policy weighs in favor of the Nations. Congress' central purpose in enacting IGRA was "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." § 2702(1). Exempting Nations from federal gaming taxation in the same manner as States preserves the Nations' sovereignty and avoids giving state gaming a competitive advantage that would interfere with the Nations' ability to raise revenue in this manner.

II

Because nothing in the text, legislative history, or underlying policies of § 2719(d) clearly resolves the contradiction inherent in the section, it is appropriate to turn to canons of statutory construction. The Nations urge the Court to rely upon the Indian canon that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit," *Montana* v. *Blackfeet Tribe*, 471 U. S., at 766, as a basis for deciding that the error in § 2719(d) lies in the restriction of the subclass, not in the specific listing of chapter 35. "[R]ooted in the unique trust relationship between the United States and the Indians," *County of Oneida* v. *Oneida Indian Nation of N. Y.*, 470 U. S. 226, 247 (1985), the Indian canon presumes congressional intent to assist its wards to overcome the disadvantages our country has placed upon them. Consistent with this purpose, the Indian canon applies to statutes as well as treaties: The form of the enactment does not change the presumption that Congress generally intends to benefit the Nations. *Montana* v. *Blackfeet Tribe, supra; County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251 (1992). In these cases, because Congress has chosen gaming as a means of enabling the Nations to achieve self-sufficiency, the Indian canon rightly dictates

that Congress should be presumed to have intended the Nations to receive more, rather than less, revenue from this enterprise.

Of course, the Indian canon is not the only canon with potential applicability in these cases. Also relevant is the taxation principle, that exemptions from taxation must be clearly expressed. *United States Trust Co.* v. *Helvering*, 307 U. S. 57, 60 (1939); see also *ante*, at 95. These canons pull in opposite directions, the former favoring the Nations' preferred reading, and the latter favoring the Government's.

This Court has repeatedly held that, when these two canons conflict, the Indian canon predominates. In *Choate* v. *Trapp*, 224 U. S. 665 (1912), a State attempted to rely on the taxation principle to argue that a treaty provision making land granted to Indians nontaxable was merely a bounty, capable of being withdrawn at any time. The Court acknowledged the taxation principle, responding:

> "But in the Government's dealings with the Indians, the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of [Indian nations.]" *Id.*, at 674–675.

In *Squire* v. *Capoeman*, 351 U. S. 1, 3 (1956), the Federal Government had conveyed land to the Nations "'free of all charge or encumbrance whatsoever.'" Although this phrase did not expressly mention nontaxability, the Court held that the language "might well be sufficient to include taxation," *id.*, at 7. Invoking the Indian canon, *id.*, at 6–7, we found the Nations exempt.

Likewise, in *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164 (1973), this Court inferred an exemption from state taxation of property inside reservations from a treaty reserving lands for the exclusive use and occupancy of the Nations. In doing so, the Court noted: "It is true, of course, that exemptions from tax laws should, as a general rule, be

clearly expressed. But we have in the past construed language far more ambiguous than this as providing a tax exemption for Indians." *Id.*, at 176 (citing *Squire*, *supra*, at 100).

As the purpose behind the Indian canon is the same regardless of the form of enactment, *supra*, at 99, there is no reason to alter the Indian canon's relative strength where a statute rather than a treaty is involved. Cf. *ante*, at 95. The primacy of the Indian canon over the taxation principle should not be surprising, as this Court has also held that the general presumption supporting the legality of executive action must yield to the Indian canon, a "counterpresumption specific" to Indians. *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 194, n. 5 (1999).

This Court has failed to apply the Indian canon to extend tax exemptions to the Nations only when nothing in the language of the underlying statute or treaty suggests the Nations should be exempted. *The Cherokee Tobacco*, 11 Wall. 616, 618, 620 (1871) (finding no exemption for the Nations from language imposing taxes on certain " 'articles produced anywhere within the exterior boundaries of the United States' "); *Choteau* v. *Burnet*, 283 U. S. 691, 693–694 (1931) (finding no exemption in provisions "subject[ing] the income of 'every individual' to tax," including "income 'from any source whatever' "); *Superintendent of Five Civilized Tribes* v. *Commissioner*, 295 U. S. 418 (1935) (same); *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 155 (1973) (refusing to exempt the Nations from taxes on land use income based on language that "[o]n its face . . . exempts land and rights in land, not income derived from its use"). *Mescalero* also went further, suggesting that because of the taxation principle, the Court would refuse to find such an exemption absent "clear statutory guidance." *Id.*, at 156. *Mescalero*'s formulation is admittedly in tension with the Court's precedents giving the Indian canon primacy over the taxation principle where statutory language is ambiguous. As *Mescalero* was

decided on the same day as one of those very precedents, the unanimous decision in *McClanahan* v. *Arizona Tax Comm'n*, *supra*, however, it cannot have intended to alter the Court's established practice.

Section 2719(d) provides an even more persuasive case for application of the Indian canon than any of our precedents. Here, the Court is not being asked to create out of vague language a tax exemption not specifically provided for in the statute. Instead, the Nations simply ask the Court to use the Indian canon as a tiebreaker between two equally plausible (or, in these cases, equally implausible) constructions of a troubled statute, one which specifically makes chapter 35's tax exemption applicable to the Nations, and one which specifically does not. Breaking interpretive ties is one of the least controversial uses of any canon of statutory construction. See Eskridge, Frickey, & Garrett, Legislation and Statutory Interpretation, at 341 ("The weakest kind of substantive canon operates merely as a *tiebreaker* at the end of the interpretive analysis").

Faced with the unhappy choice of determining which part of a flawed statutory section is in error, I would thus rely upon the long-established Indian canon of construction and adopt the reading most favorable to the Nations.

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ADARAND CONSTRUCTORS, INC. *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 00–730. Argued October 31, 2001—Decided November 27, 2001

In *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200 *(Adarand I)*, this Court held that strict scrutiny governs whether race-based classifications violate equal protection and remanded for a determination whether the race-based components of the Department of Transportation's (DOT's) Disadvantaged Business Enterprise (DBE) program could survive such review. The District Court then found that no such component could survive, but the Tenth Circuit vacated and this Court again reversed and remanded, *Adarand Constructors, Inc.* v. *Slater*, 528 U. S. 216 *(per curiam)*. Subsequently, the Tenth Circuit held, *inter alia*, that new regulations issued under the Transportation Equity Act for the 21st Century (TEA–21) pertain almost exclusively to the use of federal funds for highway projects let by States and localities, the only relevant aspect of the DBE program under review; that petitioner lacked standing and had waived its right to challenge any other race-conscious program; and that under the new regulatory framework, the DBE program being reviewed was constitutional. When this Court again granted certiorari to decide whether the Tenth Circuit misapplied *Adarand I*, it appeared that petitioner was challenging the DBE program as it pertains to the use of federal funds for state and local highway projects. Petitioner now asserts that it is challenging only the statutes and regulations pertaining to DOT's direct procurement of highway construction on federal lands.

Held: The writ of certiorari is dismissed as improvidently granted. The direct procurement statutes and regulations are quite different from the ones the Tenth Circuit reviewed. While state and local procurement is governed by the Transportation Secretary under TEA–21, direct federal procurement is governed by the Small Business Act and regulations promulgated thereunder. The shift in this case's posture requires dismissal of the writ for two reasons. First, this Court held in *Adarand I* that application of the strict scrutiny standard should be addressed in the first instance by the lower courts. However, the Tenth Circuit has not considered whether race-based programs applicable to direct federal contracting could satisfy strict scrutiny, and the Government has not addressed such programs in its merits brief. Second, to reach the merits of any challenge to the direct procurement statutes and regulations

Syllabus

would require a threshold examination of standing, but petitioner, in its certiorari petition, did not dispute the Tenth Circuit's holding that it lacked standing to make such a challenge. This Court is obliged to examine standing *sua sponte* where it has erroneously been presumed below, but not simply to reach an issue for which standing has been denied below. Mindful that this is a Court of final review, not first view, the Court thus declines to reach the merits of the present challenge.

Certiorari dismissed. Reported below: 228 F. 3d 1147.

William Perry Pendley argued the cause and filed briefs for petitioner.

Solicitor General Olson argued the cause for respondents. With him on the brief were *Assistant Attorney General Boyd, Deputy Solicitor General Clement, Jeffrey A. Lamken, Mark L. Gross, Teresa Kwong, Paul M. Geier, Peter J. Plocki, Peter S. Smith,* and *Edward V. A. Kussy.**

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*Briefs of *amici curiae* urging reversal were filed for the Associated General Contractors of America, Inc., by *John G. Roberts, Jr.*, and *Michael E. Kennedy;* for the Center for Individual Rights by *Michael E. Rosman;* for the Claremont Institute Center for Constitutional Jurisprudence by *Edwin Meese III;* for GEOD Corp. et al. by *Martin S. Kaufman* and *Briscoe R. Smith;* and for the Pacific Legal Foundation et al. by *John H. Findley* and *Sharon L. Browne.*

Briefs of *amici curiae* urging affirmance were filed for the City and County of Denver by *Eileen Penner* and *J. Wallace Wortham, Jr.;* for the Lawyers' Committee for Civil Rights Under Law et al. by *John A. Payton, Charles T. Lester, Jr., Norman Redlich, Barbara R. Arnwine, Thomas J. Henderson, Steven R. Shapiro, Christopher A. Hansen, Antonia Hernandez, Dennis C. Hayes,* and *Elliot M. Mincberg;* for the NOW Legal Defense and Education Fund et al. by *Martha F. Davis* and *Mitchell A. Lowenthal;* for the Minority Business Enterprise Legal Defense and Education Fund, Inc., et al. by *Bradley S. Phillips, Paul J. Watford,* and *Fred A. Rowley, Jr.;* for the NAACP Legal Defense and Educational Fund, Inc., by *Elaine R. Jones, Theodore M. Shaw, Norman J. Chachkin, James L. Cott,* and *Robert H. Stroup;* for the National League of Cities et al. by *Richard Ruda, James I. Crowley,* and *Robert Brauneis;* for the Office of Communication of the United Church of Christ et al. by *David Honig* and *Shelby D. Green;* for the Women First National Legislative Committee et al. by *Edward W. Correia;* and for Senator Max Baucus et al. by *Mr. Correia.*

Briefs of *amici curiae* were filed for the National Asian Pacific American Legal Consortium et al. by *Mark A. Packman, Jonathan M. Cohen,*

PER CURIAM.

We granted certiorari to review for a second time whether the Court of Appeals was correct when it concluded that the Department of Transportation's (DOT's) Disadvantaged Business Enterprise (DBE) program is consistent with the constitutional guaranty of equal protection. But upon full briefing and oral argument we find that the current posture of this case prevents review of that important question. To address it would require a threshold inquiry into issues decided by the Court of Appeals but not presented in the petition for certiorari. We therefore dismiss the writ of certiorari as improvidently granted.

Six years ago in *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200 (1995) *(Adarand I)*, we held that strict scrutiny governs whether race-based classifications violate the equal protection component of the Fifth Amendment's Due Process Clause. See *id.*, at 235 ("Federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly tailored to further that interest"). We remanded for a determination whether the race-based components of the DOT's DBE program could survive this standard of review.

On remand, the District Court for the District of Colorado found that no such race-based component then in operation could so survive. *Adarand Constructors, Inc.* v. *Peña*, 965 F. Supp. 1556 (1997). The Court of Appeals vacated the District Court's judgment, reasoning that petitioner's cause of action had been mooted because the Colorado Department of Transportation had recently certified petitioner as a DBE. *Adarand Constructors, Inc.* v. *Slater*, 169 F. 3d 1292, 1296–1297 (CA10 1999). Finding it not at all clear that petitioner's certification was valid under DOT regulations, we again

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and *Vincent A. Eng;* for Social Science and Comparative Law Scholars by *Clark D. Cunningham;* for the Southeastern Legal Foundation, Inc., by *Walter H. Ryland* and *Valle Simms Dutcher;* and for L. S. Lee, Inc., by *Mr. Ryland.*

granted certiorari, reversed the Court of Appeals, and remanded for a determination on the merits consistent with *Adarand I*. *Adarand Constructors, Inc.* v. *Slater*, 528 U. S. 216 (2000) *(per curiam)*.

Following the submission of supplemental briefs addressing statutory and regulatory changes that had occurred since the District Court's 1997 judgment favorable to petitioner, the Court of Appeals affirmed in part and reversed in part. 228 F. 3d 1147 (CA10 2000). The Court of Appeals agreed with the District Court that the DOT's DBE program was unconstitutional as it was administered in 1997. It further agreed that the automatic use of financial incentives to encourage the award of subcontracts to DBEs, as originally contemplated by the DOT's Subcontractor Compensation Clause (SCC) program, was "unconstitutional under *Adarand* [*I*'s] strict standard of scrutiny." *Id.*, at 1187. The Secretary of Transportation never challenged these rulings and has since discontinued any and all use of the SCC program. Brief for Respondents 2, 10, 13, 20, n. 3, 23. See also 228 F. 3d, at 1194 ("The government maintains, and Adarand does not dispute, that the SCC, which spawned this litigation in 1989, is no longer in use"); Tr. of Oral Arg. 25 ("[SCCs] ha[ve been] abandoned in all respects, [they] have not been justified, and the United States Government is not employing [them]").

The Court of Appeals next turned its attention to new regulations issued by the Secretary of Transportation under the Transportation Equity Act for the 21st Century (TEA–21), § 1101(b)(1), 112 Stat. 113. See 49 CFR pt. 26 (1999). These regulations pertain almost exclusively to use of federal funds for highway projects let by States and localities, which the Court of Appeals found to be the only "relevant" aspect of the DBE program under review. 228 F. 3d, at 1160. The Court of Appeals further noted that petitioner either lacked standing or had waived its right to challenge any other race-conscious program. *Ibid.* Finally, the

Court of Appeals held that, by virtue of the new regulatory framework under which the DOT's state and local DBE program now operates, that program passed constitutional muster under *Adarand I*. 228 F. 3d, at 1176–1187.

We again granted certiorari to decide whether the Court of Appeals misapplied the strict scrutiny standard announced in *Adarand I*. 532 U. S. 941 (2001). We anticipated that we would be able to review the same "relevant program" that was addressed by the Court of Appeals.[1] But since certiorari was granted there has been a shift in the posture of the case that precludes such review.

Both parties agree that the Court of Appeals confined its opinion to the constitutionality of the DOT's DBE program as it pertains to the use of federal funds for highway projects let by States and localities. See Brief for Petitioner 15–17; Brief for Respondents 19–23. It is clear from its opinion that the Court of Appeals considered no other programs; its strict scrutiny analysis relies almost exclusively on regulations designed to channel benefits, through States and localities, to firms owned by individuals who hold themselves out to be socially and economically disadvantaged. See 228 F. 3d, at 1176–1188. These regulations clearly permit the award of contracts based on race-conscious measures in jurisdictions where petitioner operates, and, as the Government concedes, provide petitioner with a potential basis for prospective relief, at least to the extent petitioner challenges them. Brief for Respondents 3.

It appeared at the certiorari stage that petitioner was indeed challenging these statutes and regulations. Nothing

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[1] We granted certiorari to review the following questions:

"1. Whether the Court of Appeals misapplied the strict scrutiny standard in determining if Congress had a compelling interest to enact legislation designed to remedy the effects of racial discrimination?

"2. Whether the United States Department of Transportation's current Disadvantaged Business Enterprise program is narrowly tailored to serve a compelling governmental interest?" 532 U. S. 968 (2001).

in the petition for certiorari contested the Court of Appeals' determination that petitioner lacked standing to challenge the statutes and regulations relating to any other race-conscious program. The petition for certiorari simply noted the Court of Appeals' determination on this ground as a matter of fact, without further comment. Pet. for Cert. 4, nn. 2, 3.

Petitioner now asserts, however, that it is not challenging any part of DOT's state and local procurement program. Instead, it claims to be challenging only the statutes and regulations that pertain to DOT's direct procurement of highway construction on federal lands. Brief for Petitioner 12–17. But the statutes and regulations relating to direct procurement are quite different from the statutes and regulations reviewed by the Court of Appeals. In particular, while procurement by States and localities is governed by the regulations issued by the Secretary of Transportation under TEA–21, direct federal procurement is governed by the Small Business Act, including §§ 8(d)(4)–(6), as added by § 211 of Pub. L. 95–507, 92 Stat. 1768, and as amended, 15 U. S. C. §§ 637(d)(4)–(6) (1994 ed. and Supp. V), and the regulations promulgated thereunder, 48 CFR pt. 19 (1998).

This shift in posture requires dismissal of the writ for two reasons. *First*, the Court of Appeals has not considered whether the various race-based programs applicable to direct federal contracting could satisfy strict scrutiny. See 228 F. 3d, at 1189, n. 35 ("There is no indication from any of the parties in their briefs or elsewhere that the particular requirements of paragraphs (4)–(6) of § 8(d) are at issue in the instant lawsuit") (citing 15 U. S. C. §§ 637(d)(4)–(6) (1994 ed. and Supp. IV)); see also 228 F. 3d, at 1188–1189, n. 32 ("The parties have not addressed paragraph (4) of § 8(d) at all, and . . . we do not address it in great detail"). The Government also has not addressed such programs in its brief on the merits. Brief for Respondents 38–50. Petitioner urges us to take on this task ourselves, and apply

strict scrutiny in the first instance to a complex web of statutes and regulations without benefit of any lower court review. But in *Adarand I*, 515 U. S., at 238–239, we said that application of our strict scrutiny standard "should be addressed in the first instance by the lower courts." We ordinarily "do not decide in the first instance issues not decided below." *National Collegiate Athletic Assn.* v. *Smith*, 525 U. S. 459, 470 (1999). See also *Glover* v. *United States*, 531 U. S. 198, 205 (2001) ("In the ordinary course we do not decide questions neither raised nor resolved below"); *Youakim* v. *Miller*, 425 U. S. 231 (1976) *(per curiam)* (same).

Second, to reach the merits of any challenge to statutes and regulations relating to direct federal procurement would require a threshold examination of whether petitioner has standing to challenge such statutes and regulations. Petitioner has sought to show that it does have such standing, but this showing was not made (and no argument was ever advanced) until three weeks before oral argument. It was made then in a reply brief submitted with a lodging of voluminous evidence that has never been presented to any lower court. Reply Brief for Petitioner 1–9. The Government has responded with a lodging of its own, contending that no race-conscious measures are used for direct procurement in any jurisdiction in which petitioner does business.[2] Whatever the merits of these competing positions, the petition for certiorari nowhere disputed the Court of Appeals' explicit

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[2] The Government states that a "Benchmark Study" completed by the Department of Commerce, see 64 Fed. Reg. 52806 (1999); 63 Fed. Reg. 35714 (1998), prohibits the use of race-conscious mechanisms for direct federal procurement of highway construction projects in any State other than Alabama, Mississippi, Louisiana, Arkansas, Kentucky, Tennessee, Texas, and Oklahoma, in none of which does petitioner conduct operations. Brief for Respondents 8–10, 22. At oral argument, the Government stated its view that the §§ 8(d)(4)–(6) programs in their current form would not meet the constitutional requirement of "narrow tailoring" if used in jurisdictions where the Benchmark Study has found no disparity suggesting discrimination or its continuing effects. Tr. of Oral Arg. 29–30.

holding that petitioner lacked standing to challenge the very provisions petitioner now asks us to review. 228 F. 3d, at 1160 ("Nor are we presented with any indication that Adarand has standing to challenge paragraphs (4)–(6) of 15 U. S. C. § 637(d)").

We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 95 (1998) ("'[I]f the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it'") (quoting *United States* v. *Corrick*, 298 U. S. 435, 440 (1936)). But we do not examine standing *sua sponte* simply to reach an issue for which standing has been *denied* below—exactly what petitioner asks that we do here. See, *e. g.*, *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U. S. Philips Corp.*, 510 U. S. 27, 31–32 (1993) *(per curiam)* (discussing this Court's Rule 14.1(a) and the "heavy presumption" against reaching threshold questions not presented in the petition for certiorari (internal quotation marks and citations omitted)).

"Mindful that this is a court of final review and not first view," *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 399 (1996) (GINSBURG, J., concurring in part and dissenting in part), we thus decline to reach the merits of petitioner's present challenge. Petitioner points out that this case presents questions of fundamental national importance calling for final resolution by this Court. But the importance of an issue should not distort the principles that control the exercise of our jurisdiction. To the contrary, "by adhering scrupulously to the customary limitations on our discretion regardless of the significance of the underlying issue, we promote respect . . . for the Court's adjudicatory process." *Adams* v. *Robertson*, 520 U. S. 83, 92, n. 6 (1997) *(per curiam)* (internal quotation marks omitted). We also "ensure that we are not tempted to engage in ill-considered

decisions of questions not presented in the petition." *Izumi Seimitsu, supra,* at 34.

For the foregoing reasons, the writ of certiorari is dismissed as improvidently granted.

It is so ordered.

Syllabus

UNITED STATES *v.* KNIGHTS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1260. Argued November 6, 2001—Decided December 10, 2001

A California court's order sentencing respondent Knights to probation for a drug offense included the condition that Knights submit to search at anytime, with or without a search or arrest warrant or reasonable cause, by any probation or law enforcement officer. Subsequently, a sheriff's detective, with reasonable suspicion, searched Knights' apartment. Based in part on items recovered, a federal grand jury indicted Knights for conspiracy to commit arson, for possession of an unregistered destructive device, and for being a felon in possession of ammunition. In granting Knights' motion to suppress, the District Court held that, although the detective had "reasonable suspicion" to believe that Knights was involved with incendiary materials, the search was for "investigatory" rather than "probationary" purposes. The Ninth Circuit affirmed.

Held: The warrantless search of Knights, supported by reasonable suspicion and authorized by a probation condition, satisfied the Fourth Amendment. As nothing in Knights' probation condition limits searches to those with a "probationary" purpose, the question here is whether the Fourth Amendment imposes such a limitation. Knights argues that a warrantless search of a probationer satisfies the Fourth Amendment only if it is just like the search at issue in *Griffin* v. *Wisconsin*, 483 U. S. 868, *i. e.*, a "special needs" search conducted by a probation officer monitoring whether the probationer is complying with probation restrictions. This dubious logic—that an opinion *upholding* the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it—runs contrary to *Griffin*'s express statement that its "special needs" holding made it "unnecessary to consider whether" warrantless searches of probationers were otherwise reasonable under the Fourth Amendment. *Id.*, at 878, 880. And this Court need not decide whether Knights' acceptance of the search condition constituted consent to a complete waiver of his Fourth Amendment rights in the sense of *Schneckloth* v. *Bustamonte*, 412 U. S. 218, because the search here was reasonable under the Court's general Fourth Amendment "totality of the circumstances" approach, *Ohio* v. *Robinette*, 519 U. S. 33, 39, with the search condition being a salient circumstance. The Fourth Amendment's touchstone is reasonableness, and a search's reasonableness is determined by assessing, on the one hand, the degree

to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed to promote legitimate governmental interests. *Wyoming* v. *Houghton*, 526 U. S. 295, 300. Knights' status as a probationer subject to a search condition informs both sides of that balance. The sentencing judge reasonably concluded that the search condition would further the two primary goals of probation—rehabilitation and protecting society from future criminal violations. Knights was unambiguously informed of the search condition. Thus, Knights' reasonable expectation of privacy was significantly diminished. In assessing the governmental interest, it must be remembered that the very assumption of probation is that the probationer is more likely than others to violate the law. *Griffin*, *supra*, at 880. The State's interest in apprehending criminal law violators, thereby protecting potential victims, may justifiably focus on probationers in a way that it does not on the ordinary citizen. On balance, no more than reasonable suspicion was required to search this probationer's house. The degree of individualized suspicion required is a determination that a sufficiently high probability of criminal conduct makes the intrusion on the individual's privacy interest reasonable. Although the Fourth Amendment ordinarily requires probable cause, a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable. See, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1. The same circumstances that lead to the conclusion that reasonable suspicion is constitutionally sufficient also render a warrant requirement unnecessary. See *Illinois* v. *McArthur*, 531 U. S. 326, 330. Because the Court's holding rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search, there is no basis for examining official purpose. Pp. 116–122.

219 F. 3d 1138, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. SOUTER, J., filed a concurring opinion, *post*, p. 122.

Malcolm L. Stewart argued the cause for the United States. With him on the briefs were *Solicitor General Olson*, *Assistant Attorney General Chertoff*, and *Deputy Solicitor General Dreeben*.

Hilary A. Fox argued the cause for respondent. With her on the brief was *Barry J. Portman*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of California by *Bill Lockyer*, Attorney General, *Robert R. Anderson*, Chief Assistant Attorney General, *Ronald A. Bass* and *Dane Gillette*, Senior As-

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

A California court sentenced respondent Mark James Knights to summary probation for a drug offense. The probation order included the following condition: that Knights would "[s]ubmit his . . . person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer." Knights signed the probation order, which stated immediately above his signature that "I HAVE RECEIVED A COPY, READ AND UNDERSTAND THE ABOVE TERMS AND CONDITIONS OF PROBATION AND AGREE TO ABIDE BY SAME." App. 49. In this case, we decide whether a search pursuant to this probation condition, and supported by reasonable suspicion, satisfied the Fourth Amendment.

Three days after Knights was placed on probation, a Pacific Gas & Electric (PG&E) power transformer and adjacent Pacific Bell telecommunications vault near the Napa County Airport were pried open and set on fire, causing an estimated $1.5 million in damage. Brass padlocks had been removed and a gasoline accelerant had been used to ignite the fire. This incident was the latest in more than 30 recent acts of vandalism against PG&E facilities in Napa County. Suspicion for these acts had long focused on Knights and his friend, Steven Simoneau. The incidents began after PG&E

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sistant Attorneys General, and *Laurence K. Sullivan*, Supervising Deputy Attorney General; for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson;* and for the Center for Community Interest by *Andrew N. Vollmer* and *Steven Rosen.*

Briefs of *amici curiae* urging affirmance were filed for the California Public Defenders Association et al. by *Kenneth I. Clayman;* for the National Association of Criminal Defense Lawyers by *John Wesley Hall, Jr.*, and *Lisa B. Kemler;* and for the Rutherford Institute by *James Joseph Lynch, Jr., John W. Whitehead*, and *Steven H. Aden.*

had filed a theft-of-services complaint against Knights and discontinued his electrical service for failure to pay his bill. Detective Todd Hancock of the Napa County Sheriff's Department had noticed that the acts of vandalism coincided with Knights' court appearance dates concerning the theft of PG&E services. And just a week before the arson, a sheriff's deputy had stopped Knights and Simoneau near a PG&E gas line and observed pipes and gasoline in Simoneau's pickup truck.

After the PG&E arson, a sheriff's deputy drove by Knights' residence, where he saw Simoneau's truck parked in front. The deputy felt the hood of the truck. It was warm. Detective Hancock decided to set up surveillance of Knights' apartment. At about 3:10 the next morning, Simoneau exited the apartment carrying three cylindrical items. Detective Hancock believed the items were pipe bombs. Simoneau walked across the street to the bank of the Napa River, and Hancock heard three splashes. Simoneau returned without the cylinders and drove away in his truck. Simoneau then stopped in a driveway, parked, and left the area. Detective Hancock entered the driveway and observed a number of suspicious objects in the truck: a Molotov cocktail and explosive materials, a gasoline can, and two brass padlocks that fit the description of those removed from the PG&E transformer vault.

After viewing the objects in Simoneau's truck, Detective Hancock decided to conduct a search of Knights' apartment. Detective Hancock was aware of the search condition in Knights' probation order and thus believed that a warrant was not necessary.[1] The search revealed a detonation cord, ammunition, liquid chemicals, instruction manuals on chemistry and electrical circuitry, bolt cutters, telephone pole-climbing spurs, drug paraphernalia, and a brass padlock stamped "PG&E."

[1] Hancock had seen a copy of the probation order when he was checking Knights' file in the Sheriff's Department office.

Knights was arrested, and a federal grand jury subsequently indicted him for conspiracy to commit arson, for possession of an unregistered destructive device, and for being a felon in possession of ammunition. Knights moved to suppress the evidence obtained during the search of his apartment. The District Court held that Detective Hancock had "reasonable suspicion" to believe that Knights was involved with incendiary materials. App. to Pet. for Cert. 30a. The District Court nonetheless granted the motion to suppress on the ground that the search was for "investigatory" rather than "probationary" purposes. The Court of Appeals for the Ninth Circuit affirmed. 219 F. 3d 1138 (2000). The Court of Appeals relied on its earlier decisions holding that the search condition in Knights' probation order "must be seen as limited to probation searches, and must stop short of investigation searches." *Id.*, at 1142–1143 (citing *United States* v. *Ooley*, 116 F. 3d 370, 371 (CA9 1997)).

The Supreme Court of California has rejected this distinction and upheld searches pursuant to the California probation condition "whether the purpose of the search is to monitor the probationer or to serve some other law enforcement purpose." *People* v. *Woods*, 21 Cal. 4th 668, 681, 981 P. 2d 1019, 1027 (1999), cert. denied, 529 U. S. 1023 (2000). We granted certiorari, 532 U. S. 1018 (2001), to assess the constitutionality of searches made pursuant to this common California probation condition.

Certainly nothing in the condition of probation suggests that it was confined to searches bearing upon probationary status and nothing more. The search condition provides that Knights will submit to a search "by any probation officer or law enforcement officer" and does not mention anything about purpose. App. 49. The question then is whether the Fourth Amendment limits searches pursuant to this probation condition to those with a "probationary" purpose.

Knights argues that this limitation follows from our decision in *Griffin* v. *Wisconsin*, 483 U. S. 868 (1987). Brief for Respondent 14. In *Griffin*, we upheld a search of a probationer conducted pursuant to a Wisconsin regulation permitting "any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are 'reasonable grounds' to believe the presence of contraband," 483 U. S., at 870–871. The Wisconsin regulation that authorized the search was not an express condition of Griffin's probation; in fact, the regulation was not even promulgated at the time of Griffin's sentence.[2] The regulation applied to all Wisconsin probationers, with no need for a judge to make an individualized determination that the probationer's conviction justified the need for warrantless searches. We held that a State's operation of its probation system presented a "special need" for the "exercise of supervision to assure that [probation] restrictions are in fact observed." *Id.*, at 875. That special need for supervision justified the Wisconsin regulation and the search pursuant to the regulation was thus reasonable. *Id.*, at 875–880.

In Knights' view, apparently shared by the Court of Appeals, a warrantless search of a probationer satisfies the Fourth Amendment only if it is just like the search at issue in *Griffin*—*i. e.*, a "special needs" search conducted by a probation officer monitoring whether the probationer is complying with probation restrictions. This dubious logic—that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it—runs contrary to *Griffin*'s express statement that its "special needs" holding made it "unnecessary to consider whether" warrantless searches of probationers were other-

[2] Griffin was placed on probation in September 1980, 483 U. S., at 870, and the regulation was not promulgated until December 1981, *id.*, at 871.

wise reasonable within the meaning of the Fourth Amendment.[3] *Id.*, at 878, 880.

We now consider that question in assessing the constitutionality of the search of Knights' apartment. The Government, advocating the approach of the Supreme Court of California, see *Woods, supra,* contends that the search satisfied the Fourth Amendment under the "consent" rationale of cases such as *Zap* v. *United States,* 328 U. S. 624 (1946), and *Schneckloth* v. *Bustamonte,* 412 U. S. 218 (1973). In the Government's view, Knights' acceptance of the search condition was voluntary because he had the option of rejecting probation and going to prison instead, which the Government argues is analogous to the voluntary decision defendants often make to waive their right to a trial and accept a plea bargain.[4]

We need not decide whether Knights' acceptance of the search condition constituted consent in the *Schneckloth* sense of a complete waiver of his Fourth Amendment rights, however, because we conclude that the search of Knights was reasonable under our general Fourth Amendment approach of "examining the totality of the circumstances," *Ohio* v. *Robinette,* 519 U. S. 33, 39 (1996), with the probation search condition being a salient circumstance.

The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined "by

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[3] The Wisconsin Supreme Court had held in *Griffin* that "probation diminishes a probationer's reasonable expectation of privacy—so that a probation officer may, consistent with the Fourth Amendment, search a probationer's home without a warrant, and with only 'reasonable grounds' (not probable cause) to believe that contraband is present." *Id.*, at 872.

[4] The Government sees our unconstitutional conditions doctrine as a limitation on what a probationer may validly consent to in a probation order. The Government argues that the search condition is not an unconstitutional condition because waiver of Fourth Amendment rights "directly furthers the State's interest in the effective administration of its probation system." Brief for United States 22.

assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming* v. *Houghton*, 526 U. S. 295, 300 (1999). Knights' status as a probationer subject to a search condition informs both sides of that balance. "Probation, like incarceration, is 'a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty.'" *Griffin*, *supra*, at 874 (quoting G. Killinger, H. Kerper, & P. Cromwell, Probation and Parole in the Criminal Justice System 14 (1976)). Probation is "one point . . . on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service." 483 U. S., at 874. Inherent in the very nature of probation is that probationers "do not enjoy 'the absolute liberty to which every citizen is entitled.'" *Ibid.* (quoting *Morrissey* v. *Brewer*, 408 U. S. 471, 480 (1972)). Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.

The judge who sentenced Knights to probation determined that it was necessary to condition the probation on Knights' acceptance of the search provision. It was reasonable to conclude that the search condition would further the two primary goals of probation—rehabilitation and protecting society from future criminal violations.[5] The probation order clearly expressed the search condition and Knights was unambiguously informed of it. The probation condition

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[5] Under California law, a probation condition is invalid if it (1) has no relationship to the crime of which defendant was convicted; (2) relates to conduct which in itself is not criminal; and (3) requires or forbids conduct which is not reasonably related to future criminality. *People* v. *Lent*, 15 Cal. 3d 481, 485–486, 541 P. 2d 545, 548 (1975).

thus significantly diminished Knights' reasonable expectation of privacy.[6]

In assessing the governmental interest side of the balance, it must be remembered that "the very assumption of the institution of probation" is that the probationer "is more likely than the ordinary citizen to violate the law." *Griffin*, 483 U. S., at 880. The recidivism rate of probationers is significantly higher than the general crime rate. See U. S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, Recidivism of Felons on Probation, 1986–89, pp. 1, 6 (Feb. 1992) (reporting that 43% of 79,000 felons placed on probation in 17 States were rearrested for a felony within three years while still on probation); U. S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, Probation and Parole Violators in State Prison, 1991, p. 3 (Aug. 1995) (stating that in 1991, 23% of state prisoners were probation violators). And probationers have even more of an incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal because probationers are aware that they may be subject to supervision and face revocation of probation, and possible incarceration, in proceedings in which the trial rights of a jury and proof beyond a reasonable doubt, among other things, do not apply, see *Minnesota* v. *Murphy*, 465 U. S. 420, 435, n. 7 (1984) ("[T]here is no right to a jury trial before probation may be revoked"); 18 U. S. C. § 3583(e).

The State has a dual concern with a probationer. On the one hand is the hope that he will successfully complete pro-

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[6] We do not decide whether the probation condition so diminished, or completely eliminated, Knights' reasonable expectation of privacy (or constituted consent, see *supra*, at 118) that a search by a law enforcement officer without any individualized suspicion would have satisfied the reasonableness requirement of the Fourth Amendment. The terms of the probation condition permit such a search, but we need not address the constitutionality of a suspicionless search because the search in this case was supported by reasonable suspicion.

bation and be integrated back into the community. On the other is the concern, quite justified, that he will be more likely to engage in criminal conduct than an ordinary member of the community. The view of the Court of Appeals in this case would require the State to shut its eyes to the latter concern and concentrate only on the former. But we hold that the Fourth Amendment does not put the State to such a choice. Its interest in apprehending violators of the criminal law, thereby protecting potential victims of criminal enterprise, may therefore justifiably focus on probationers in a way that it does not on the ordinary citizen.

We hold that the balance of these considerations requires no more than reasonable suspicion to conduct a search of this probationer's house. The degree of individualized suspicion required of a search is a determination of when there is a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable. See *United States* v. *Cortez*, 449 U. S. 411, 418 (1981) (individualized suspicion deals "with probabilities"). Although the Fourth Amendment ordinarily requires the degree of probability embodied in the term "probable cause," a lesser degree satisfies the Constitution when the balance of governmental and private interests makes such a standard reasonable. See, *e. g.*, *Terry* v. *Ohio*, 392 U. S. 1 (1968); *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975). Those interests warrant a lesser than probable-cause standard here. When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy interests is reasonable.

The same circumstances that lead us to conclude that reasonable suspicion is constitutionally sufficient also render a warrant requirement unnecessary. See *Illinois* v. *McArthur*, 531 U. S. 326, 330 (2001) (noting that general

or individual circumstances, including "diminished expectations of privacy," may justify an exception to the warrant requirement).

Because our holding rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search, there is no basis for examining official purpose. With the limited exception of some special needs and administrative search cases, see *Indianapolis* v. *Edmond*, 531 U. S. 32, 45 (2000), "we have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers." *Whren* v. *United States*, 517 U. S. 806, 813 (1996).

The District Court found, and Knights concedes, that the search in this case was supported by reasonable suspicion. We therefore hold that the warrantless search of Knights, supported by reasonable suspicion and authorized by a condition of probation, was reasonable within the meaning of the Fourth Amendment. The judgment of the Court of Appeals is reversed, and the cause is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOUTER, concurring.

As this case was originally presented to us, the dispute centered on whether Knights's agreement to the search condition included in his terms of probation covered only those searches with a probation-related purpose, or rather extended to searches with an investigatory or law-enforcement purpose. At that time, the Government argued that *Whren* v. *United States*, 517 U. S. 806 (1996), precluded any enquiry into the motives of the individual officers conducting the search. We now hold that law-enforcement searches of probationers who have been informed of a search condition are permissible upon individualized suspicion of criminal behavior committed during the probationary period, thus removing any issue of the subjective intention of the investi-

gating officers from the case. I would therefore reserve the question whether *Whren*'s holding, that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis," *id.*, at 813, should extend to searches based only upon reasonable suspicion.

Syllabus

J. E. M. AG SUPPLY, INC., DBA FARM ADVANTAGE, INC., ET AL. *v.* PIONEER HI-BRED INTERNATIONAL, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 99–1996. Argued October 3, 2001—Decided December 10, 2001

Respondent Pioneer Hi-Bred International, Inc. (Pioneer), holds 17 utility patents issued under 35 U. S. C. § 101 that cover the manufacture, use, sale, and offer for sale of its inbred and hybrid corn seed products. Pioneer sells its patented hybrid seeds under a limited label license that allows only the production of grain and/or forage, and prohibits using such seed for propagation or seed multiplication or for the production or development of a hybrid or different seed variety. Petitioner J. E. M. Ag Supply, Inc., doing business as Farm Advantage, Inc., bought patented seeds from Pioneer in bags bearing the license agreement and then resold the bags. Pioneer filed this patent infringement suit against Farm Advantage and distributors and customers of Farm Advantage (collectively Farm Advantage or petitioners). Farm Advantage filed a patent invalidity counterclaim, arguing that sexually reproducing plants, such as Pioneer's corn plants, are not patentable subject matter within § 101. Farm Advantage maintained that the Plant Patent Act of 1930 (PPA) and the Plant Variety Protection Act (PVPA) set forth the exclusive statutory means for protecting plant life because these statutes are more specific than § 101, and thus each carves out subject matter from § 101 for special treatment. The District Court granted Pioneer summary judgment. Relying on this Court's broad construction of § 101 in *Diamond* v. *Chakrabarty*, 447 U. S. 303, the District Court held that § 101 clearly covers plant life. It also held that in enacting the PPA and the PVPA, Congress neither expressly nor implicitly removed plants from § 101's subject matter. In particular, the District Court noted that Congress did not implicitly repeal § 101 by passing the more specific PVPA because there was no irreconcilable conflict between the two statutes. The Federal Circuit affirmed.

Held: Newly developed plant breeds fall within the subject matter of § 101, and neither the PPA nor the PVPA limits the scope of § 101's coverage. Pp. 130–146.

(a) In approaching the question presented here, this Court is mindful that it has already recognized that § 101's language is extremely broad and has concluded that living things are patentable under that provision,

Chakrabarty, supra, at 308, 313, 315. Since 1985, the Patent and Trademark Office (PTO) has had an unbroken practice of conferring utility patents for plants. Nonetheless, petitioners argue that the PPA and the PVPA are the exclusive means of protecting new varieties of plants, and so awarding utility patents for plants upsets the scheme contemplated by Congress. Pp. 130–132.

(b) Neither the PPA's original nor its recodified text indicates that its protection for asexually reproduced plants was intended to be exclusive. The 1930 PPA amended the general patent provision to protect only the asexual reproduction of a plant. And Congress' 1952 revision, which placed plant patents into a separate chapter 15, was only a housekeeping measure that did not change the substantive rights or the relaxed requirements for such patents. Plant patents under the PPA thus continue to have very limited coverage and less stringent requirements than § 101 utility patents. Importantly, chapter 15 nowhere states that plant patents are the exclusive means of granting intellectual property protection to plants. The arguments that petitioners advance for why the PPA should preclude assigning utility patents for plants are unpersuasive because petitioners fail to take account of the forward-looking perspective of the utility patent statute and the reality of plant breeding in 1930. Pp. 132–138.

(c) That the PVPA specifically authorizes limited patent-like protection for certain sexually reproduced plants does not evidence Congress' intent to deny broader § 101 utility patent protection for such plants. While the PVPA creates a comprehensive statutory scheme with respect to its particular protections and subject matter, giving limited protection to plant varieties that are new, distinct, uniform, and stable, nowhere does it restrict the scope of patentable subject matter under § 101. The PVPA contains no statement of exclusivity. Furthermore, at the time the PVPA was enacted, the PTO had already issued numerous utility patents for hybrid plant processes, which reaffirms that such material was within § 101's scope. Petitioners also err in arguing that the PVPA altered § 101's subject-matter coverage by implication. Repeal by implication requires that the earlier and later statutes be irreconcilable, *Morton* v. *Mancari*, 417 U. S. 535, 550. The differences in the requirements for, and coverage of, utility patents and PVPA plant variety certificates, however, do not present irreconcilable conflicts because the requirements for a § 101 utility patent are more stringent than those for a PVP certificate, and the protections afforded by a utility patent are greater than those afforded by a PVP certificate. Petitioners' suggestion that dual protection cannot exist when statutes overlap and purport to protect the same commercially valuable attribute or thing is rejected as well. This Court has given effect to two over-

lapping statutes, so long as each reaches some distinct cases, see *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253, and it has allowed dual protection in other intellectual property cases, see, *e. g.*, *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U. S. 470, 484. In this case, many plant varieties that are unable to satisfy § 101's stringent requirements might still qualify for the PVPA's lesser protections. Pp. 138–144.

(d) The PTO has assigned utility patents for plants for at least 16 years, and there has been no indication from either Congress or agencies with expertise that such coverage is inconsistent with the PVPA or the PPA. Congress has not only failed to pass legislation indicating that it disagrees with the PTO's interpretation of § 101; it has even recognized the availability of utility patents for plants. Pp. 144–145.

200 F. 3d 1374, affirmed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a concurring opinion, *post*, p. 146. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 147. O'CONNOR, J., took no part in the consideration or decision of the case.

Bruce E. Johnson argued the cause for petitioners. With him on the briefs was *S. P. DeVolder.*

Edmund J. Sease argued the cause for respondent. With him on the brief were *Herbert H. Jervis, Daniel J. Cosgrove,* and *Richard G. Taranto.*

Deputy Solicitor General Wallace argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Olson, Acting Assistant Attorney General Schiffer, Austin C. Schlick, Barbara Biddle, Alfred Mollin, John M. Whealan, Bruce J. Chasan, Stephen Walsh,* and *James Michael Kelly.**

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*Briefs of *amici curiae* urging reversal were filed for the American Corn Growers Association et al. by *Joseph Mendelson III;* and for *Malla Pollack, pro se,* et al.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Martha W. Barnett* and *Reid G. Adler;* for the American Crop Protection Association by *David L. Kelleher;* for the American Intellectual Property Law Association by *Robert L. Baechtold* and *Warren D. Woessner;* for the American Seed Trade Association by *Gary Jay Kushner;* for the Biotechnology Industry Organization by *Jeffrey P. Ku-*

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the question whether utility patents may be issued for plants under 35 U. S. C. § 101 (1994 ed.), or whether the Plant Variety Protection Act, 84 Stat. 1542, as amended, 7 U. S. C. § 2321 *et seq.*, and the Plant Patent Act of 1930, 35 U. S. C. §§ 161–164 (1994 ed. and Supp. V), are the exclusive means of obtaining a federal statutory right to exclude others from reproducing, selling, or using plants or plant varieties. We hold that utility patents may be issued for plants.

I

The United States Patent and Trademark Office (PTO) has issued some 1,800 utility patents for plants, plant parts, and seeds pursuant to 35 U. S. C. § 101. Seventeen of these patents are held by respondent Pioneer Hi-Bred International, Inc. (Pioneer). Pioneer's patents cover the manufacture, use, sale, and offer for sale of the company's inbred and hybrid corn seed products. A patent for an inbred corn line protects both the seeds and plants of the inbred line and the hybrids produced by crossing the protected inbred line with another corn line. See, *e. g.*, U. S. Patent No. 5,506,367, col. 3, App. 42. A hybrid plant patent protects the plant, its seeds, variants, mutants, and trivial modifications of the hybrid. See U. S. Patent No. 5,491,295, cols. 2–3, *id.*, at 29–30.

Pedigree inbred corn plants are developed by crossing corn plants with desirable characteristics and then inbreeding the resulting plants for several generations until the resulting plant line is homogenous. Inbreds are often weak

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shan, Marinn F. Carlson, and *Stephan E. Lawton;* for Cargill, Inc., by *Frank P. Porcelli, Michael E. Florey, Richard J. Anderson, Jonathan E. Singer, John A. Dragseth, Timothy S. Bishop,* and *Thomas B. Nachbar;* for the Delta and Pine Land Co. by *Shawn N. Sullivan;* for the Monsanto Co. by *Richard L. Stanley;* and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *R. Shawn Gunnarson.*

Thomas E. Friebel filed a brief for BASF Corp. as *amicus curiae.*

and have a low yield; their value lies primarily in their use for making hybrids. See, *e. g.*, U. S. Patent No. 5,506,367, col. 6, *id.*, at 43 (describing the traits and applications of the inbred corn line PHP38 by reference to the qualities exhibited in hybrid plants created with PHP38).

Hybrid seeds are produced by crossing two inbred corn plants and are especially valuable because they produce strong and vibrant hybrid plants with selected highly desirable characteristics. For instance, Pioneer's hybrid corn plant 3394 is "characterized by superior yield for maturity, excellent seedling vigor, very good roots and stalks, and exceptional stay green." U. S. Patent No. 5,491,295, cols. 2–3, *id.*, at 29–30. Hybrid plants, however, generally do not reproduce true-to-type, *i. e.*, seeds produced by a hybrid plant do not reliably yield plants with the same hybrid characteristics. Thus, a farmer who wishes to continue growing hybrid plants generally needs to buy more hybrid seed.

Pioneer sells its patented hybrid seeds under a limited label license that provides: "License is granted solely to produce grain and/or forage." *Id.*, at 51. The license "does not extend to the use of seed from such crop or the progeny thereof for propagation or seed multiplication." *Ibid.* It strictly prohibits "the use of such seed or the progeny thereof for propagation or seed multiplication or for production or development of a hybrid or different variety of seed." *Ibid.*

Petitioner J. E. M. Ag Supply, Inc., doing business as Farm Advantage, Inc., purchased patented hybrid seeds from Pioneer in bags bearing this license agreement. Although not a licensed sales representative of Pioneer, Farm Advantage resold these bags. Pioneer subsequently brought a complaint for patent infringement against Farm Advantage and several other corporations and residents of the State of Iowa who are distributors and customers for Farm Advantage (referred to collectively as Farm Advantage or petitioners). Pioneer alleged that Farm Advantage has "for a long-time

past been and still [is] infringing one or more [Pioneer patents] by making, using, selling, or offering for sale corn seed of the . . . hybrids in infringement of these patents-in-suit." *Id.*, at 10.

Farm Advantage answered with a general denial of patent infringement and entered a counterclaim of patent invalidity, arguing that patents that purport to confer protection for corn plants are invalid because sexually reproducing plants are not patentable subject matter within the scope of 35 U. S. C. § 101 (1994 ed.). App. 12–13, 17. Farm Advantage maintained that the Plant Patent Act of 1930 (PPA) and the Plant Variety Protection Act (PVPA) set forth the exclusive statutory means for the protection of plant life because these statutes are more specific than § 101, and thus each carves out subject matter from § 101 for special treatment.[1]

The District Court granted summary judgment to Pioneer. Relying on this Court's broad construction of § 101 in *Diamond* v. *Chakrabarty*, 447 U. S. 303 (1980), the District Court held that the subject matter covered by § 101 clearly includes plant life. 49 USPQ 2d 1813, 1817 (ND Iowa 1998). It further concluded that in enacting the PPA and the PVPA Congress neither expressly nor implicitly removed plants from § 101's subject matter. *Id.*, at 1819. In particular, the District Court noted that Congress did not implicitly repeal § 101 by passing the more specific PVPA because there was no irreconcilable conflict between the PVPA and § 101. *Id.*, at 1821.

The United States Court of Appeals for the Federal Circuit affirmed the judgment and reasoning of the District

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[1] Petitioners favor a holding that the PVPA is the only means of protecting these corn plants primarily because the PVPA's coverage is generally less extensive and the hybrid seeds at issue do not have PVPA protection. App. 14. Most notably, the PVPA provides exemptions for research and for farmers to save seed from their crops for replanting. See *infra*, at 140. Utility patents issued for plants do not contain such exemptions.

Court. 200 F. 3d 1374 (2000). We granted certiorari, 531 U. S. 1143 (2001), and now affirm.

II

The question before us is whether utility patents may be issued for plants pursuant to 35 U. S. C. § 101 (1994 ed.). The text of § 101 provides:

> "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title."

As this Court recognized over 20 years ago in *Chakrabarty*, 447 U. S., at 308, the language of § 101 is extremely broad. "In choosing such expansive terms as 'manufacture' and 'composition of matter,' modified by the comprehensive 'any,' Congress plainly contemplated that the patent laws would be given wide scope." *Ibid.* This Court thus concluded in *Chakrabarty* that living things were patentable under § 101, and held that a manmade micro-organism fell within the scope of the statute. As Congress recognized, "the relevant distinction was not between living and inanimate things, but between products of nature, whether living or not, and human-made inventions." *Id.*, at 313.

In *Chakrabarty*, the Court also rejected the argument that Congress must expressly authorize protection for new patentable subject matter:

> "It is, of course, correct that Congress, not the courts, must define the limits of patentability; but it is equally true that once Congress has spoken it is 'the province and duty of the judicial department to say what the law is.' *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Congress has performed its constitutional role in defining patentable subject matter in § 101; we perform ours in construing the language Congress has em-

> ployed. . . . The subject-matter provisions of the patent law have been cast in broad terms to fulfill the constitutional and statutory goal of promoting 'the Progress of Science and the useful Arts' with all that means for the social and economic benefits envisioned by Jefferson." *Id.*, at 315.

Thus, in approaching the question presented by this case, we are mindful that this Court has already spoken clearly concerning the broad scope and applicability of § 101.[2]

Several years after *Chakrabarty*, the PTO Board of Patent Appeals and Interferences held that plants were within the understood meaning of "manufacture" or "composition of matter" and therefore were within the subject matter of § 101. *In re Hibberd*, 227 USPQ 443, 444 (1985). It has been the unbroken practice of the PTO since that time to confer utility patents for plants. To obtain utility patent protection, a plant breeder must show that the plant he has developed is new, useful, and nonobvious. 35 U. S. C. §§ 101–103 (1994 ed. and Supp. V). In addition, the plant must meet the specifications of § 112, which require a written description of the plant and a deposit of seed that is publicly accessible. See 37 CFR §§ 1.801–1.809 (2001).

Petitioners do not allege that Pioneer's patents are invalid for failure to meet the requirements for a utility patent. Nor do they dispute that plants otherwise fall within the terms of § 101's broad language that includes "manufacture"

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[2] JUSTICE BREYER argues that *Diamond* v. *Chakrabarty*, 447 U. S. 303, 315 (1980), cannot determine the outcome of this case because it did not answer the precise question presented. See *post*, at 147–149 (dissenting opinion). But this simply misses the mark. *Chakrabarty* broadly interpreted the reach of § 101. This interpretation is surely germane to the question whether sexually reproduced plants fall within the subject matter of § 101. In addition, *Chakrabarty*'s discussion of the PPA and the PVPA is relevant to petitioners' primary arguments against utility patent protection for sexually reproduced plants. See 447 U. S., at 310–314; see also *infra*, at 134–135.

or "composition of matter." Rather, petitioners argue that the PPA and the PVPA provide the exclusive means of protecting new varieties of plants, and so awarding utility patents for plants upsets the scheme contemplated by Congress. Brief for Petitioners 11. We disagree. Considering the two plant specific statutes in turn, we find that neither forecloses utility patent coverage for plants.

A

The 1930 PPA conferred patent protection to asexually reproduced plants. Significantly, nothing within either the original 1930 text of the statute or its recodified version in 1952 indicates that the PPA's protection for asexually reproduced plants was intended to be exclusive.

Plants were first explicitly brought within the scope of patent protection in 1930 when the PPA included "plants" among the useful things subject to patents. Thus the 1930 PPA amended the general utility patent provision, Rev. Stat. § 4886, to provide:

> "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, . . . may . . . obtain a patent therefor." Act of May 23, 1930, § 1, 46 Stat. 376.

This provision limited protection to the asexual reproduction of the plant. Asexual reproduction occurs by grafting, budding, or the like, and produces an offspring with a genetic combination identical to that of the single parent—essentially a clone.[3] The PPA also amended Revised Statutes

[3] By contrast, sexual reproduction occurs by seed and sometimes involves two different plants.

§ 4888 by adding: "No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible." *Id.*, § 2, 46 Stat. 376.

In 1952, Congress revised the patent statute and placed the plant patents into a separate chapter 15 of Title 35 entitled, "Patents for plants." 35 U. S. C. §§ 161–164.[4] This was merely a housekeeping measure that did nothing to change the substantive rights or requirements for a plant patent. A "plant patent"[5] continued to provide only the exclusive right to asexually reproduce a protected plant, § 163, and the description requirement remained relaxed, § 162.[6] Plant patents under the PPA thus have very limited coverage and less stringent requirements than § 101 utility patents.

Importantly, chapter 15 nowhere states that plant patents are the exclusive means of granting intellectual property protection to plants. Although unable to point to any language that requires, or even suggests, that Congress intended the PPA's protections to be exclusive, petitioners advance three reasons why the PPA should preclude assigning utility patents for plants. We find none of these arguments to be persuasive.

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[4] The PPA, as amended, provides: "Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U. S. C. § 161 (1994 ed.).

[5] Patents issued under § 161 are referred to as "plant patents," which are distinguished from § 101 utility patents and § 171 design patents.

[6] To obtain a plant patent under § 161 a breeder must meet all of the requirements for § 101, except for the description requirement. See § 162 ("No plant patent shall be declared invalid for noncompliance with section 112 [providing for written description] of this title if the description is as complete as is reasonably possible").

First, petitioners argue that plants were not covered by the general utility patent statute prior to 1930. Brief for Petitioners 19 ("If the patent laws before 1930 allowed patents on 'plants' then there would have been no reason for Congress to have passed the 1930 PPA . . ."). In advancing this argument, petitioners overlook the state of patent law and plant breeding at the time of the PPA's enactment. The Court in *Chakrabarty* explained the realities of patent law and plant breeding at the time the PPA was enacted: "Prior to 1930, two factors were thought to remove plants from patent protection. The first was the belief that plants, even those artificially bred, were products of nature for purposes of the patent law. . . . The second obstacle to patent protection for plants was the fact that plants were thought not amenable to the 'written description' requirement of the patent law." 447 U. S., at 311–312. Congress addressed these concerns with the 1930 PPA, which recognized that the work of a plant breeder was a patentable invention and relaxed the written description requirement. See §§ 1–2, 46 Stat. 376. The PPA thus gave patent protection to breeders who were previously unable to overcome the obstacles described in *Chakrabarty*.

This does not mean, however, that prior to 1930 plants could not have fallen within the subject matter of § 101. Rather, it illustrates only that in 1930 Congress *believed* that plants were not patentable under § 101, both because they were living things and because in practice they could not meet the stringent description requirement. Yet these premises were disproved over time. As this Court held in *Chakrabarty*, "the relevant distinction" for purposes of § 101 is not "between living and inanimate things, but between products of nature, whether living or not, and human-made inventions." 447 U. S., at 313. In addition, advances in biological knowledge and breeding expertise have allowed plant breeders to satisfy § 101's demanding description requirement.

Whatever Congress may have believed about the state of patent law and the science of plant breeding in 1930, plants have always had the *potential* to fall within the general subject matter of § 101, which is a dynamic provision designed to encompass new and unforeseen inventions. "A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability." *Id.*, at 316.

Petitioners essentially ask us to deny utility patent protection for sexually reproduced plants because it was unforeseen in 1930 that such plants could receive protection under § 101. Denying patent protection under § 101 simply because such coverage was thought technologically infeasible in 1930, however, would be inconsistent with the forward-looking perspective of the utility patent statute. As we noted in *Chakrabarty*, "Congress employed broad general language in drafting § 101 precisely because [new types of] inventions are often unforeseeable." *Ibid.*

Second, petitioners maintain that the PPA's limitation to asexually reproduced plants would make no sense if Congress intended § 101 to authorize patents on plant varieties that were sexually reproduced. But this limitation once again merely reflects the reality of plant breeding in 1930. At that time, the primary means of reproducing bred plants true-to-type was through asexual reproduction. Congress thought that sexual reproduction through seeds was not a stable way to maintain desirable bred characteristics.[7]

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[7] The Senate Report accompanying the bill notes: "All such plants must be asexually reproduced in order to have their identity preserved. This is necessary since seedlings either of chance or self-pollenization from any of these would not preserve the character of the individual." S. Rep. No. 315, 71st Cong., 2d Sess., 3 (1930).

This Report, like the text, indicates Congress' intent to limit plant patent coverage to asexual reproduction, but explains that this limitation "recognizes a practical situation"—*i. e.*, that propagation by seeds does not preserve the character of the original. See *id.*, at 4 ("[T]he patent right granted is a right to propagate the new variety by asexual

Thus, it is hardly surprising that plant patents would protect only asexual reproduction, since this was the most reliable type of reproduction for preserving the desirable characteristics of breeding. See generally E. Sinnott, Botany Principles and Problems 266–267 (1935); J. Priestley & L. Scott, Introduction to Botany 530 (1938).

Furthermore, like other laws protecting intellectual property, the plant patent provision must be understood in its proper context. Until 1924, farmers received seed from the Government's extensive free seed program that distributed millions of packages of seed annually. See Fowler, The Plant Patent Act of 1930: A Sociological History of its Creation, 82 J. Pat. & Tm. Off. Soc. 621, 623, 632 (2000).[8] In 1930, seed companies were not primarily concerned with varietal protection, but were still trying to successfully commodify seeds. There was no need to protect seed breeding because there were few markets for seeds. See Kloppenburg 71 ("Seed companies' first priority was simply to establish a market, and they continued to view the congressional distribution as a principal constraint").

By contrast, nurseries at the time had successfully commercialized asexually reproduced fruit trees and flowers. These plants were regularly copied, draining profits from those who discovered or bred new varieties. Nurseries

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reproduction. It does not include the right to propagate by seeds. This limitation in the right granted recognizes a practical situation and greatly narrows the scope of the bill"). The limitation to asexual reproduction was a recognition of the "practical situation" that seedlings did not reproduce true-to-type. An exclusive right to asexual reproduction was the only type of coverage needed and thought possible given the state of plant breeding at the time.

[8] At its high point in 1897, over 20 million packages of seed were distributed to farmers. See N. Klose, America's Crop Heritage 98 (1950). Even at the time the program was eliminated in 1924, it was the third largest line item in the Department of Agriculture's budget. See J. Kloppenburg, First the Seed: The Political Economy of Plant Biotechnology 1492–2000, p. 71 (1988) (hereinafter Kloppenburg).

were the primary subjects of agricultural marketing and so it is not surprising that they were the specific focus of the PPA. See Fowler, *supra*, at 634–635; Kneen, Patent Plants Enrich Our World, National Geographic 357, 363 (1948).

Moreover, seed companies at the time could not point to genuinely new varieties and lacked the scientific knowledge to engage in formal breeding that would increase agricultural productivity. See Kloppenburg 77; Fowler, *supra*, at 633 ("Absent significant numbers of distinct new varieties being produced by seed companies, variety protection through something like a patent law would hardly have been considered a business necessity"). In short, there is simply no evidence, let alone the overwhelming evidence needed to establish repeal by implication, see *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367, 381 (1996), that Congress, by specifically protecting asexually reproduced plants through the PPA, intended to preclude utility patent protection for sexually reproduced plants.[9]

Third, petitioners argue that in 1952 Congress would not have moved plants out of the utility patent provision and into § 161 if it had intended § 101 to allow for protection of plants. Brief for Petitioners 20. Petitioners again rely on

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[9] The dissent relies on *United States* v. *Estate of Romani*, 523 U. S. 517 (1998), for the proposition that "a later, more specific statute trumps an earlier, more general one." See *post*, at 156. Yet in *Estate of Romani* this purported rule was applied because the meaning of the earlier statute was "unresolved." 523 U. S., at 530. The Court noted that "despite the age of the statute, and despite the fact that it has been the subject of a great deal of litigation," its meaning had not been definitively established. *Id.*, at 529. By contrast, the statutory terms "manufacture or composition of matter" were not similarly unresolved at the time the PPA was passed. In addition, these subject-matter terms have been interpreted broadly to evolve with developments in science and technology. See *Chakrabarty*, 447 U. S., at 315. Moreover, even in *Estate of Romani*, the Court considered that there was no "plain inconsistency" between the earlier and later statutes. 523 U. S., at 533.

negative inference because they cannot point to any express indication that Congress intended § 161 to be the exclusive means of patenting plants. But this negative inference simply does not support carving out subject matter that otherwise fits comfortably within the expansive language of § 101, especially when § 101 can protect different attributes and has more stringent requirements than does § 161.

This is especially true given that Congress in 1952 did nothing to change the substantive rights or requirements for obtaining a plant patent. Absent a clear intent to the contrary, we are loath to interpret what was essentially a housekeeping measure as an affirmative decision by Congress to deny sexually reproduced plants patent protection under § 101.

B

By passing the PVPA in 1970, Congress specifically authorized limited patent-like protection for certain sexually reproduced plants. Petitioners therefore argue that this legislation evidences Congress' intent to deny broader § 101 utility patent protection for such plants. Petitioners' argument, however, is unavailing for two reasons. First, nowhere does the PVPA purport to provide the exclusive statutory means of protecting sexually reproduced plants. Second, the PVPA and § 101 can easily be reconciled. Because it is harder to qualify for a utility patent than for a Plant Variety Protection (PVP) certificate, it only makes sense that utility patents would confer a greater scope of protection.

1

The PVPA provides plant variety protection for:

> "The breeder of any sexually reproduced or tuber propagated plant variety (other than fungi or bacteria) who has so reproduced the variety . . . ." 7 U. S. C. § 2402(a).

Infringement of plant variety protection occurs, *inter alia*, if someone sells or markets the protected variety, sexually multiplies the variety as a step in marketing, uses the variety in producing a hybrid, or dispenses the variety without notice that the variety is protected.[10]

Since the 1994 amendments, the PVPA also protects "any variety that is essentially derived from a protected variety," § 2541(c)(1), and "any variety whose production requires the

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[10] Title 7 U. S. C. § 2541(a) provides in full:

"(a) Acts constituting infringement

"Except as otherwise provided in this subchapter, it shall be an infringement of the rights of the owner of a protected variety to perform without authority, any of the following acts in the United States, or in commerce which can be regulated by Congress or affecting such commerce, prior to expiration of the right to plant variety protection but after either the issue of the certificate or the distribution of a protected plant variety with the notice under section 2567 of this title:

"(1) sell or market the protected variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

"(2) import the variety into, or export it from, the United States;

"(3) sexually multiply, or propagate by a tuber or part of a tuber, the variety as a step in marketing (for growing purposes) the variety;

"(4) use the variety in producing (as distinguished from developing) a hybrid or different variety therefrom;

"(5) use seed which had been marked 'Unauthorized Propagation Prohibited' or 'Unauthorized Seed Multiplication Prohibited' or progeny thereof to propagate the variety;

"(6) dispense the variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received;

"(7) condition the variety for the purpose of propagation, except to the extent that the conditioning is related to the activities permitted under section 2543 of this title;

"(8) stock the variety for any of the purposes referred to in paragraphs (1) through (7);

"(9) perform any of the foregoing acts even in instances in which the variety is multiplied other than sexually, except in pursuance of a valid United States plant patent; or

"(10) instigate or actively induce performance of any of the foregoing acts."

repeated use of a protected variety," § 2541(c)(3). See Plant Variety Protection Act Amendments of 1994, § 9, 108 Stat. 3142. Practically, this means that hybrids created from protected plant varieties are also protected; however, it is not infringement to use a protected variety for the development of a hybrid. See 7 U. S. C. § 2541(a)(4).[11]

The PVPA also contains exemptions for saving seed and for research. A farmer who legally purchases and plants a protected variety can save the seed from these plants for replanting on his own farm. See § 2543 ("[I]t shall not infringe any right hereunder for a person to save seed produced by the person from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on the farm of the person . . ."); see also *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179 (1995). In addition, a protected variety may be used for research. See 7 U. S. C. § 2544 ("The use and reproduction of a protected variety for plant breeding or other bona fide research shall not constitute an infringement of the protection provided under this chapter"). The utility patent statute does not contain similar exemptions.[12]

Thus, while the PVPA creates a statutory scheme that is comprehensive with respect to its particular protections and subject matter, giving limited protection to plant varieties that are new, distinct, uniform, and stable, § 2402(a), nowhere does it restrict the scope of patentable subject matter under § 101. With nothing in the statute to bolster their view that

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[11] It is, however, infringement of a utility patent to use a protected plant in the development of another variety. See *infra*, at 143.

[12] The dissent argues that our "reading would destroy" the PVPA's exemptions. *Post*, at 155. Yet such bold predictions are belied by the facts. According to the Government, over 5,000 PVP certificates have been issued, as compared to about 1,800 utility patents for plants. Tr. of Oral Arg. 41. Since 1985 the PTO has interpreted § 101 to include utility patents for plants, and there is no evidence that the availability of such patents has rendered the PVPA and its specific exemptions obsolete.

the PVPA provides the exclusive means for protecting sexually reproducing plants, petitioners rely on the legislative history of the PVPA. They argue that this history shows the PVPA was enacted because sexually reproducing plant varieties and their seeds were not and had never been intended by Congress to be included within the classes of things patentable under Title 35.[13]

The PVPA itself, however, contains no statement that PVP certificates were to be the exclusive means of protecting sexually reproducing plants. The relevant statements in the legislative history reveal nothing more than the limited view of plant breeding taken by some Members of Congress who believed that patent protection was unavailable for sexually reproduced plants. This view stems from a lack of awareness concerning scientific possibilities.

Furthermore, at the time the PVPA was enacted, the PTO had already issued numerous utility patents for hybrid plant processes. Many of these patents, especially since the 1950's, included claims on the products of the patented process, *i. e.*, the hybrid plant itself. See Kloppenburg 264. Such plants were protected as part of a hybrid process and not on their own. Nonetheless, these hybrids still enjoyed protection under § 101, which reaffirms that such material was within the scope of § 101.

2

Petitioners next argue that the PVPA altered the subject-matter coverage of § 101 by implication. Brief for Petitioners 33–36. Yet "the only permissible justification for a repeal by implication is when the earlier and later statutes

[13] Petitioners point to a House Report that concluded:

"Under patent law, protection is presently limited to those varieties of plants which reproduce asexually, that is, by such methods as grafting or budding. No protection is available to those varieties of plants which reproduce sexually, that is, generally by seeds." H. R. Rep. No. 91–1605, p. 1 (1970); Brief for Petitioners 40.

are irreconcilable." *Morton* v. *Mancari*, 417 U. S. 535, 550 (1974). "The rarity with which [the Court has] discovered implied repeals is due to the relatively stringent standard for such findings, namely, that there be an irreconcilable conflict between the two federal statutes at issue." *Matsushita*, 516 U. S., at 381 (internal quotation marks omitted).

To be sure, there are differences in the requirements for, and coverage of, utility patents and PVP certificates issued pursuant to the PVPA. These differences, however, do not present irreconcilable conflicts because the requirements for obtaining a utility patent under § 101 are more stringent than those for obtaining a PVP certificate, and the protections afforded by a utility patent are greater than those afforded by a PVP certificate. Thus, there is a parallel relationship between the obligations and the level of protection under each statute.

It is much more difficult to obtain a utility patent for a plant than to obtain a PVP certificate because a utility patentable plant must be new, useful, and nonobvious, 35 U. S. C. §§ 101–103. In addition, to obtain a utility patent, a breeder must describe the plant with sufficient specificity to enable others to "make and use" the invention after the patent term expires. § 112. The disclosure required by the Patent Act is "the *quid pro quo* of the right to exclude." *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U. S. 470, 484 (1974). The description requirement for plants includes a deposit of biological material, for example, seeds, and mandates that such material be accessible to the public. See 37 CFR §§ 1.801–1.809 (2001); see also App. 39 (seed deposits for U. S. Patent No. 5,491,295).

By contrast, a plant variety may receive a PVP certificate without a showing of usefulness or nonobviousness. See 7 U. S. C. § 2402(a) (requiring that the variety be only new, distinct, uniform, and stable). Nor does the PVPA require a description and disclosure as extensive as those required under § 101. The PVPA requires a "description of the vari-

ety setting forth its distinctiveness, uniformity and stability and a description of the genealogy and breeding procedure, when known." 7 U. S. C. § 2422(2). It also requires a deposit of seed in a public depository, § 2422(4), but neither the statute nor the applicable regulation mandates that such material be accessible to the general public during the term of the PVP certificate. See 7 CFR § 97.6 (2001).

Because of the more stringent requirements, utility patent holders receive greater rights of exclusion than holders of a PVP certificate. Most notably, there are no exemptions for research or saving seed under a utility patent. Additionally, although Congress increased the level of protection under the PVPA in 1994, a PVP certificate still does not grant the full range of protections afforded by a utility patent. For instance, a utility patent on an inbred plant line protects that line as well as all hybrids produced by crossing that inbred with another plant line. Similarly, the PVPA now protects "any variety whose production requires the repeated use of a protected variety." 7 U. S. C. § 2541(c)(3). Thus, one cannot use a protected plant variety to produce a hybrid for commercial sale. PVPA protection still falls short of a utility patent, however, because a breeder can use a plant that is protected by a PVP certificate to "develop" a new inbred line while he cannot use a plant patented under § 101 for such a purpose. See 7 U. S. C. § 2541(a)(4) (infringement includes "use [of] the variety in producing (as distinguished from developing) a hybrid or different variety therefrom"). See also H. R. Rep. No. 91–1605, p. 11 (1970); 1 D. Chisum, Patents § 1.05[2][d][i], p. 549 (2001).

For all of these reasons, it is clear that there is no "positive repugnancy" between the issuance of utility patents for plants and PVP coverage for plants. *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 155 (1976). Nor can it be said that the two statutes "cannot mutually coexist." *Ibid.* Indeed, "when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional inten-

tion to the contrary, to regard each as effective." *Morton, supra,* at 551. Here we can plainly regard each statute as effective because of its different requirements and protections. The plain meaning of § 101, as interpreted by this Court in *Chakrabarty,* clearly includes plants within its subject matter. The PPA and the PVPA are not to the contrary and can be read alongside § 101 in protecting plants.

3

Petitioners also suggest that even when statutes overlap and purport to protect the same commercially valuable attribute of a thing, such "dual protection" cannot exist. Brief for Petitioners 44–45. Yet this Court has not hesitated to give effect to two statutes that overlap, so long as each reaches some distinct cases. See *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253 (1992) (statutes that overlap "do not pose an either-or proposition" where each confers jurisdiction over cases that the other does not reach). Here, while utility patents and PVP certificates do contain some similar protections, as discussed above, the overlap is only partial.

Moreover, this Court has allowed dual protection in other intellectual property cases. "Certainly the patent policy of encouraging invention is not disturbed by the existence of another form of incentive to invention. In this respect the two systems [trade secret protection and patents] are not and never would be in conflict." *Kewanee Oil, supra,* at 484; see also *Mazer* v. *Stein,* 347 U. S. 201, 217 (1954) (the patentability of an object does not preclude the copyright of that object as a work of art). In this case, many plant varieties that are unable to satisfy the stringent requirements of § 101 might still qualify for the lesser protections afforded by the PVPA.

III

We also note that the PTO has assigned utility patents for plants for at least 16 years and there has been no indica-

tion from either Congress or agencies with expertise that such coverage is inconsistent with the PVPA or the PPA. The Board of Patent Appeals and Interferences, which has specific expertise in issues of patent law, relied heavily on this Court's decision in *Chakrabarty* when it interpreted the subject matter of § 101 to include plants. *In re Hibberd*, 227 USPQ 443 (1985). This highly visible decision has led to the issuance of some 1,800 utility patents for plants. Moreover, the PTO, which administers § 101 as well as the PPA, recognizes and regularly issues utility patents for plants. In addition, the Department of Agriculture's Plant Variety Protection Office acknowledges the existence of utility patents for plants.

In the face of these developments, Congress has not only failed to pass legislation indicating that it disagrees with the PTO's interpretation of § 101; it has even recognized the availability of utility patents for plants. In a 1999 amendment to 35 U. S. C. § 119, which concerns the right of priority for patent rights, Congress provided: "Applications for plant breeder's rights filed in a WTO [World Trade Organization] member country . . . shall have the same effect for the purpose of the right of priority . . . as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents." 35 U. S. C. § 119(f) (1994 ed., Supp. V). Crucially, § 119(f) is part of the general provisions of Title 35, not the specific chapter of the PPA, which suggests a recognition on the part of Congress that plants are patentable under § 101.

IV

For these reasons, we hold that newly developed plant breeds fall within the terms of § 101, and that neither the PPA nor the PVPA limits the scope of § 101's coverage. As in *Chakrabarty*, we decline to narrow the reach of § 101 where Congress has given us no indication that it intends

this result. 447 U. S., at 315–316. Accordingly, we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE O'CONNOR took no part in the consideration or decision of this case.

JUSTICE SCALIA, concurring.

This case presents an interesting and difficult point of statutory construction, seemingly pitting against each other two perfectly valid canons of interpretation: (1) that statutes must be construed in their entirety, so that the meaning of one provision sheds light upon the meaning of another; and (2) that repeals by implication are not favored. I think these sensible canons are reconcilable only if the first of them is limited by the second. That is to say, the power of a provision of law to give meaning to a previously enacted ambiguity comes to an end once the ambiguity has been authoritatively resolved. At that point, use of the later enactment produces not clarification (governed by the first canon) but amendment (governed by the second).

In the present case, the only ambiguity that could have been clarified by the words added to the utility patent statute by the Plant Patent Act of 1930 (PPA) is whether the term "composition of matter" included living things. The newly enacted provision for plants invited the conclusion that this term which preceded it did not include living things. (The term "matter," after all, is sometimes used in a sense that excludes living things. See Webster's New International Dictionary 1515 (2d ed. 1950): "Physical substance as made up of chemical elements and distinguished from incorporeal substance, action, qualities, etc. . . . '*Matter* is inert, senseless, and lifeless.' *Johnson.*") It is important to note that this is *the only way* in which the new PPA language could have clarified the ambiguity: There was no way in which "composition of matter" could be regarded as a

category separate from plants, but not separate from other living things.

Stare decisis, however, prevents us from any longer regarding as an open question—as ambiguous—whether "composition of matter" includes living things. *Diamond* v. *Chakrabarty*, 447 U. S. 303, 312–313 (1980), holds that it does. As the case comes before us, therefore, the language of the PPA—if it is to have any effect on the outcome—must do so by way of *amending* what we have held to be a statute that covers living things (and hence covers plants). At this point the canon against repeal by implication comes into play, and I agree with the Court that it determines the outcome. I therefore join the opinion of the Court.

JUSTICE BREYER, with whom JUSTICE STEVENS joins, dissenting.

The question before us is whether the words "manufacture" or "composition of matter" contained in the utility patent statute, 35 U. S. C. § 101 (1994 ed.) (Utility Patent Statute), cover plants that also fall within the scope of two more specific statutes, the Plant Patent Act of 1930 (PPA), 35 U. S. C. § 161 *et seq.* (1994 ed. and Supp. V), and the Plant Variety Protection Act (PVPA), 7 U. S. C. § 2321 *et seq.* I believe that the words "manufacture" or "composition of matter" do *not* cover these plants. That is because Congress intended the two more specific statutes to exclude patent protection under the Utility Patent Statute for the plants to which the more specific Acts directly refer. And, as the Court implicitly recognizes, this Court neither considered nor decided this question in *Diamond* v. *Chakrabarty*, 447 U. S. 303 (1980). Consequently, I dissent.

I

Respondent and the Government claim that *Chakrabarty* controls the outcome in this case. This is incorrect, for *Chakrabarty* said nothing about the specific issue before us.

Chakrabarty, in considering the scope of the Utility Patent Statute's language "manufacture, or composition of matter," 35 U. S. C. § 101 (1994 ed.), asked whether those words included such living things as bacteria—a substance to which neither of the two specific plant Acts refers. 447 U. S., at 313–314. The Court held that the Utility Patent Statute language included a "new" bacterium because it was "a nonnaturally occurring manufacture or composition of matter" that was "not nature's handiwork." *Id.*, at 309–310. It quoted language from a congressional Committee Report indicating that "Congress intended statutory subject matter to 'include anything under the sun that is made by man.'" *Id.*, at 309 (quoting S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H. R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952)). But it nowhere said or implied that this Utility Patent Statute language also includes the very subject matter with which the two specific statutes deal, namely, plants. Whether a bacterium technically speaking is, or is not, a plant, the Court considered it a "life form," and not the kind of "plant" that the two specific statutes had in mind. 447 U. S., at 314 (noting that the PVPA specifically excluded bacteria, and that the Court of Customs and Patent Appeals had held that bacteria were not plants for purposes of the PPA).

The Court did consider a complicated argument that sought indirectly to relate the two specific plant statutes to the issue before it. That argument went roughly as follows: (1) Congress enacted two special statutes related to plants. (2) Even though those two statutes do not cover bacteria, the fact that Congress enacted them shows that Congress thought the Utility Patent Statute's language ("manufacture, or composition of matter") did not cover any living thing, including bacteria. (3) Congress consequently must have intended the two special Acts to provide exclusive protection for all forms of "life" whether they do, or do not, count as the kinds of "plants" to which the specific statutes refer.

The Court, in reply, wrote that Congress, when enacting the specific statutes, might have (wrongly) believed that the Utility Patent Statute did not apply to plants, probably because Congress thought that plants were "natural products," not human products. *Id.*, at 311. It added that Congress also might have believed that it was too difficult for plant inventors to meet patent law's ordinary "written description" requirement. *Id.*, at 312. In addition, the Court pointed out that the relevant distinction between unpatentable and patentable subject matter was not between living and inanimate things, but rather between products of nature and human-made inventions. *Id.*, at 312–313. As such, the bacteria at issue were patentable because they were products of human invention. And the Court concluded that "nothing" in Congress' decision to *exclude* bacteria from the PVPA supported "petitioner's position," namely, that Congress intended no utility patent protection for any living thing. *Id.*, at 313–314.

Neither this refutation nor the argument itself decides the question here. That question is *not* about general coverage for matters that the special statutes *do not* mention (namely, nonplant life forms such as bacteria). It *is* about general coverage for matters to which the special plant statutes do refer (namely, plants). *Chakrabarty* neither asked, nor answered, this latter question, the question now before us. And nothing in the Court's opinion indicates the contrary.

II

The critical question, as I have said, is whether the two specific plant statutes embody a legislative intent to deny coverage under the Utility Patent Statute *to those plants to which the specific plant statutes refer.* In my view, the first of these statutes, the PPA, reveals precisely that intent. And nothing in the later history of either the Utility Patent Statute or the PVPA suggests the contrary.

As initially enacted in 1930, the PPA began by amending the Utility Patent Statute to read as follows:

> "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, *or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant* . . . may . . . obtain a patent therefor[e]." Rev. Stat. §4886, as amended by Act of May 23, 1930, §1, 46 Stat. 376 (language added by the PPA italicized).

This language refers to *all* plants. It says that an inventor—in principle—can obtain a patent on *any* plant (the subject matter of the patent) that meets three requirements. It must be distinct; it must be new; and on one or more occasions it must have been "asexually reproduced," *e. g.*, reproduced by means of a graft.

This last-mentioned "graft" requirement does not separate (1) those plants that can reproduce through grafting from (2) those plants that can reproduce by seed. The two categories are not mutually exclusive. P. Raven, R. Evert, & S. Eichhorn, Biology of Plants 179–180, 255 (6th ed. 1999). Many plants—perhaps virtually any plant—can be reproduced "asexually" as well as by seed. S. Rep. No. 315, 71st Cong., 2d Sess., 5 (1930). Rather, the "asexual reproduction" requirement sought to ensure that the inventor was capable of reproducing the new variety "asexually" (through a graft) because that fact would guarantee that the variety's new characteristics had genetic (rather than, say, environmental) causes and would prove genetically stable over time. See *ibid.* ("A plant patent covers only the exclusive right of asexual reproduction, and obviously it would be futile to grant a patent for a new and distinct variety unless the variety had been demonstrated to be susceptible to asexual reproduction"); cf. *Dunn* v. *Ragin*, 50 USPQ 472, 474 (1941)

(noting that asexual reproduction "determine[s] that the progeny in fact possess the characteristic or characteristics which distinguish it as a new variety").

Although the section defining the PPA's coverage does not limit its scope to plants that reproduce primarily through grafting, a later section does so limit the protection that it offers. That section specifies that the patent holder will receive "the exclusive right to asexually reproduce the plant," *e. g.*, the right to reproduce it through grafting, but he will not receive an exclusive right to reproduce the plant sexually, *i. e.*, the right to reproduce it through seeds. 46 Stat. 376. And this is true *regardless* of whether the patent holder could reproduce true to type offspring through seeds. See S. Rep. No. 315, at 4 ("On the other hand, [the PPA] does not give any patent protection to the right of propagation of the new variety by seed, irrespective of the degree to which the seedlings come true to type"). This was a significant limitation because, the Court's contrary claim notwithstanding, *ante*, at 135, and n. 7, it was readily apparent in 1930 that a plant's desirable characteristics *could* be preserved through reproduction by seed. See Fowler, The Plant Patent Act of 1930: A Sociological History of its Creation, 82 J. Pat. & Tm. Off. Soc. 621, 635, 644 (2000).

In sum, the PPA permits patenting of new and distinct varieties of (1) plants that breeders primarily reproduce through grafts (say, apple trees), (2) plants that breeders primarily reproduce through seeds (say, corn), and (3) plants that reproduce both ways (say, violets). See C. Chong, Plant Propagation, reprinted in 1 CRC Handbook of Plant Science in Agriculture 91–92, 94, 104 (B. Christie & A. Hanson eds., 1987); Raven, Evert, & Eichhorn, *supra*, at 179. But, because that statute left plant buyers free to keep, to reproduce, and to sell seeds, the statute likely proved helpful *only* to those in the first category. Both the PPA's legislative history and the earliest patents granted under the Act fully support this interpretation. See S. Rep. No. 315, at 3

(explaining that varieties that "resul[t] from seedlings of cross pollenization of two species" were patentable under the Act); Plant Patent Nos. 1–2, 5–6, 8–11 (roses); Plant Patent Nos. 7, 15 (peach trees).

Given these characteristics, the PPA is incompatible with the claim that the Utility Patent Statute's language ("manufacture, or composition of matter") also covers plants. To see why that is so, simply imagine a plant breeder who, in 1931, sought to patent a new, distinct variety of plant that he invented but which he has *never been able to reproduce through grafting, i.e., asexually.* Because he could not reproduce it through grafting, he could not patent it under the more specific terms of the PPA. Could he nonetheless patent it under the more general Utility Patent Statute language "manufacture, or composition of matter?"

Assume the court that tried to answer that question was prescient, *i.e.*, that it knew that this Court, in *Chakrabarty*, 447 U. S., at 311–312, would say that the Utility Patent Statute language ("manufacture," or "composition of matter") in principle might cover "anything under the sun," including bacteria. Such a prescient court would have said that the Utility Patent Statute did cover plants had the case reached it in 1929, before Congress enacted the more specific 1930 law. But how could any court decide the case similarly in 1931 after enactment of the 1930 amendment? To do so would virtually nullify the PPA's primary condition—that the breeder have reproduced the new characteristic through a graft—reading it out of the Act. Moreover, since the Utility Patent Statute would cover, and thereby forbid, reproduction by seed, such a holding would also have read out of the statute the PPA's more limited list of exclusive rights. Consequently, even a prescient court would have had to say, as of 1931, that the 1930 Plant Patent Act had, in amending the Utility Patent Statute, placed the subject matter of the PPA—namely, plants—outside the scope of the words "manufacture, or composition of matter." See *United States*

v. *Estate of Romani*, 523 U. S. 517, 530–533 (1998) (holding that a later, specific statute trumps an earlier, more general statute).

Nothing that occurred after 1930 changes this conclusion. In 1952, the Utility Patent Statute was recodified, and the PPA language I have quoted was given its own separate place in the Code. See 35 U. S. C. § 161 *et seq.* (1994 ed. and Supp. V). As Pioneer itself concedes, that change was not "substantive." Brief for Respondent 7; see also *ante*, at 133. Indeed, as recodified the PPA still allows a breeder to obtain a patent when he "invents or discovers and asexually reproduces *any* distinct and new variety of plant," 35 U. S. C. § 161 (1994 ed.) (emphasis added), but it only allows the patent holder to "exclude others from *asexually* reproducing the plant or selling or using the plant so reproduced," § 163 (emphasis added).

Nor does the enactment of the Plant Variety Protection Act of 1970 change the conclusion. The PVPA proved necessary because plant breeders became capable of creating new and distinct varieties of certain crops, corn, for example, that were valuable only when reproduced through seeds—a form of reproduction that the earlier Act freely permitted. See S. Rep. No. 91–1246, pp. 2–3 (1970). Just prior to its enactment a special Presidential Commission, noting the special problems that plant protection raised and favoring the development of a totally new plant protection scheme, had recommended that "[a]ll provisions in the patent statute for plant patents be deleted . . . ." President's Commission on the Patent System, To Promote the Progress of Useful Arts, S. Doc. No. 5, 90th Cong., 1st Sess., 20–21 (1967) (hereinafter S. Doc.). Instead Congress kept the PPA while adding the PVPA. The PVPA gave patent-like protection (for 20 years) to plants reproduced by seed, and it excluded the PPA's requirement that a breeder have "asexually reproduced" the plant. 7 U. S. C. §§ 2402, 2483. It imposed certain specific requirements. § 2402 (variety must be new,

distinct, uniform, and stable). And it provided the breeder with an exclusive right to sell, offer to sell, reproduce, import, or export the variety, including the seeds. § 2483.

At the same time, the PVPA created two important exceptions. The first provided that a farmer who plants his fields with a protected plant "shall not infringe any right hereunder" by saving the seeds and planting them in future years. § 2543. The second permitted "use and reproduction of a protected variety for plant breeding or other bona fide research." § 2544.

Nothing in the history, language, or purpose of the 1970 statute suggests an intent to reintroduce into the scope of the general words "manufacture, or composition of matter" the subject matter that the PPA had removed, namely, plants. To the contrary, any such reintroduction would make meaningless the two exceptions—for planting and for research—that Congress wrote into that Act. It is not surprising that no party argues that passage of the PVPA somehow enlarged the scope of the Utility Patent Statute.

III

The Court replies as follows to the claim that its reading of the Utility Patent Statute nullifies the PPA's limitation of protection to plants produced by graft and the PVPA's exemptions for seeds and research: (1) The Utility Patent Statute applies only to plants that are useful, novel, nonobvious, and for which the inventor provides an enabling written description of the invention. 35 U. S. C. §§ 101, 102, 103, 112 (1994 ed. and Supp. V). (2) The PVPA applies to plants that are novel, distinct, uniform, and stable. 7 U. S. C. § 2402. (3) The second set of criteria seem slightly easier to meet, as they do not include nonobviousness and a written description (Pioneer does not argue that the "useful" requirement is significant). (4) And Congress could reasonably have intended the planting and research exceptions to

apply only to the set of plants that can meet the easier, but not the tougher, criteria.

I do not find this argument convincing. For one thing, it is not clear that the general patent law requirements are significantly tougher. Counsel for Pioneer stated at oral argument that there are many more PVP certificates than there are plant patents. But he added that the major difference in criteria is the difference between the utility patent law's "nonobviousness" requirement and the specific Acts' requirement of "newness"—a difference that may reflect the Patent Office's more "rigorous" examination process. See Tr. of Oral Arg. 26, 30. But see S. Doc., at 20–21 (suggesting little difference because patent office tends to find "nonobviousness" as long as the plant is deemed "new" by the Department of Agriculture).

In any case, there is no relationship between the criteria differences and the exemptions. Why would anyone want to limit the exemptions—related to seedplanting and research—only to those new plant varieties that are slightly less original? Indeed, the research exemption would seem more useful in respect to more original, not less original, innovation. The Court has advanced no sound reason why Congress would want to destroy the exemptions in the PVPA that Congress created. And the Court's reading would destroy those exemptions.

The Court and JUSTICE SCALIA's concurrence also rely upon the interpretive canon that disfavors repeal by implication. The Court, citing *Matsushita Elec. Industrial Co.* v. *Epstein*, 516 U. S. 367 (1996), says that "there is simply no evidence" that the PPA was meant to preclude § 101 protection for sexually reproduced plants. *Ante*, at 137. But reliance on the canon of "implied repeal" is misplaced. The canon has traditionally been embraced when a party claims that a later statute—*that does not actually modify an earlier statute*—implicitly repeals the earlier legislation. *E. g.*, 516 U. S., at 380–381. That canon has *no* relevance to the

PPA—which *explicitly* amended the Utility Patent Statute by limiting protection to plants produced by graft. Even were that not so, the Court has noted that a later, more specific statute will ordinarily trump the earlier, more general one. See *United States* v. *Estate of Romani*, 523 U. S., at 530–533.

Regardless, canons are not mandatory rules. They are guides to help courts determine likely legislative intent. See *Chickasaw Nation* v. *United States*, *ante*, p. 84; see also *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 115 (2001); *id.*, at 137–140 (SOUTER, J., dissenting). And that intent is critical. Those who write statutes seek to solve human problems. Fidelity to their aims requires us to approach an interpretive problem not as if it were a purely logical game, like a Rubik's Cube, but as an effort to divine the human intent that underlies the statute. Here that effort calls not for an appeal to canons, but for an analysis of language, structure, history, and purpose. Those factors make clear that the Utility Patent Statute does not apply to plants. Nothing in *Chakrabarty* holds to the contrary.

For these reasons, I dissent.

Per Curiam

STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SMITH

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01–339. Decided December 12, 2001

Respondent filed a federal habeas petition, claiming ineffective assistance of both his trial and appellate counsel. He had previously brought these claims in a state petition for postconviction relief pursuant to Arizona Rule of Criminal Procedure 32, but the County Superior Court found them waived under Rule 32.2(a)(3) because he had not raised them in two previous Rule 32 petitions. The Federal District Court found that this ruling barred respondent's federal habeas claim. In reversing, the Ninth Circuit held that the state procedural default was not independent of federal law and thus did not bar federal review. It reasoned that Rule 32.2(a)(3) applies a different waiver standard depending on whether the claim asserted was of sufficient constitutional magnitude, and that the determination whether a claim is of such magnitude required, at the time of the Superior Court's ruling, consideration of the claim's merits.

Held: In order to determine whether the Ninth Circuit properly interpreted Arizona law concerning Rule 32.2(a)(3), this Court certifies to the Arizona Supreme Court the following question: At the time of respondent's third Rule 32 petition, did the question whether an asserted claim was of sufficient constitutional magnitude to require a knowing, voluntary, and intelligent waiver under Rule 32.2(a)(3) depend upon the particular claim's merits or merely upon the particular right alleged to have been violated? The state court's answer will help determine the proper state-law predicate for this Court's determination of the federal constitutional questions presented here. Judgment and further proceedings in this case are reserved pending receipt of the Arizona Supreme Court's response.

Certiorari granted; question certified. Reported below: 241 F. 3d 1191.

PER CURIAM.

Respondent Robert Douglas Smith was convicted in 1982 of first-degree murder, kidnaping, and sexual assault. He was sentenced to death on the murder count, and consecu-

tive 21-year prison terms for the other counts. After a series of unsuccessful petitions for state postconviction relief, respondent filed a federal petition for a writ of habeas corpus under 28 U. S. C. § 2254 (1994 ed. and Supp. V) in the United States District Court for the District of Arizona. The petition alleged that his trial and appellate counsel were ineffective for failing to challenge various trial errors. Respondent had previously brought these ineffective-assistance claims in 1995 in a petition for state postconviction relief pursuant to Arizona Rule of Criminal Procedure 32 (West 2000). The Pima County Superior Court denied his claims, finding them waived under Arizona Rule 32.2(a)(3) because respondent failed to raise them in his previous two Rule 32 petitions. In doing so, it rejected as "outrageous" respondent's argument that his failure to raise these claims was also due to ineffective assistance—in particular, that his prior appellate and Rule 32 counsel, who are members of the Arizona Public Defender's office, refused to file ineffective-assistance-of-counsel claims because his trial counsel was also a member of the Public Defender's office. App. D to Pet. for Cert. 1.

On federal habeas, the United States District Court held respondent's claims barred by the Pima County Superior Court's procedural ruling. The court rejected respondent's allegations that a conflict between his appellate and Rule 32 counsel's responsibility toward respondent and their allegiance to the Public Defender's office was cause for his procedural default in state court. The Court of Appeals for the Ninth Circuit reversed, holding that the state procedural default was not independent of federal law and thus did not bar federal review of the merits of respondent's claim, 241 F. 3d 1191, 1196 (2001) (citing *Ake* v. *Oklahoma*, 470 U. S. 68, 75 (1985)). It reasoned that Arizona Rule 32.2(a)(3) applies a different standard for waiver depending on whether the claim asserted in a Rule 32 petition was of "sufficient constitutional magnitude," Ariz. Rule Crim. Proc. 32.2(a)(3), comment (West 2000), and that determination whether a claim is

of sufficient magnitude required, at the time the Superior Court ruled on respondent's ineffective-assistance claims, consideration of the merits of the claim, 241 F. 3d, at 1197 (citing *State* v. *French*, 198 Ariz. 119, 121–122, 7 P. 3d 128, 130–131 (App. 2000); *State* v. *Curtis*, 185 Ariz. 112, 115, 912 P. 2d 1341, 1344 (App. 1995)).

We hereby grant certiorari to review the Ninth Circuit Court of Appeals' determination that the Pima County Superior Court's procedural ruling was not independent of the merits of respondent's claims of ineffective assistance of trial and appellate counsel under the Sixth Amendment.* In order to determine whether the District Court may review these claims, we first must know whether the Court of Appeals properly interpreted Arizona law concerning Rule 32.2(a)(3). Therefore, we certify the following question to the Arizona Supreme Court pursuant to that court's rule concerning Certification of Questions of Law from Federal and Tribal Courts (Ariz. Sup. Ct. Rule 27 (West 2000)):

> At the time of respondent's third Rule 32 petition in 1995, did the question whether an asserted claim was of "sufficient constitutional magnitude" to require a knowing, voluntary, and intelligent waiver for purposes of Rule 32.2(a)(3), see Ariz. Rule Crim. Proc. 32.2(a)(3), comment (West 2000), depend upon the merits of the particular claim, see *State* v. *French*, 198 Ariz. 119, 121–122, 7 P. 3d 128, 130–131 (App. 2000); *State* v. *Curtis*, 185 Ariz. App. 112, 115, 912 P. 2d 1341, 1344 (1995), or merely upon the particular right alleged to have been violated, see *State* v. *Espinosa*, 200 Ariz. 503, 505, 29 P. 3d 278, 280 (App. 2001)?

We respectfully request that the Arizona Supreme Court accept our certification petition. That court's answer to this

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*We also grant respondent's motion for leave to proceed *in forma pauperis* and the motion of the Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae*.

question will help determine the proper state-law predicate for our determination of the federal constitutional questions raised in this case.

The Clerk of this Court is directed to transmit to the Supreme Court of Arizona an original and six certified copies of this opinion, the briefs and records filed in this Court in this case, and a list of the counsel appearing in this matter along with their addresses and telephone numbers, pursuant to Ariz. Sup. Ct. Rules 27(a)(3)(c) and (a)(4) (West 2000). Judgment and further proceedings in this case are reserved pending our receipt of a response from the Supreme Court of Arizona.

It is so ordered.

Syllabus

DUSENBERY *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 00–6567. Argued October 29, 2001—Decided January 8, 2002

While petitioner was in prison on federal drug charges, the Federal Bureau of Investigation (FBI) began an administrative process to forfeit cash that officers seized when they executed a search warrant for the residence where petitioner was arrested. The statute in effect at the time required the agency, *inter alia*, to send written notice of the seizure and applicable forfeiture procedures to each party who appeared to have an interest in the property. 19 U. S. C. § 1607(a). The FBI sent such notice by certified mail addressed to petitioner care of the federal correctional institution (FCI) where he was incarcerated; to the address of the residence where he was arrested; and to an address in the town where his mother lived. It received no response in the time allotted and turned over the cash to the United States Marshals Service. Subsequently, petitioner moved in the District Court under Federal Rule of Criminal Procedure 41(e) for return of all the property and funds seized in his criminal case. The court denied the motion. The Sixth Circuit vacated and remanded, holding that the motion should have been construed as a civil complaint seeking equitable relief for a due process challenge to the adequacy of the notice. On remand, the District Court presided over a telephone deposition of an FCI officer who stated that he signed the certified mail receipt for the FBI's notice to petitioner and testified about the FCI's procedures for accepting, logging, and delivering certified mail addressed to inmates. The court granted the Government summary judgment, ruling that its sending of notice by certified mail to petitioner's place of incarceration satisfied his due process rights. The Sixth Circuit affirmed.

Held: The FBI's notice of the cash forfeiture satisfied due process. The Fifth Amendment's Due Process Clause entitles individuals whose property interests are at stake to "notice and an opportunity to be heard." *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 48. The straightforward reasonableness under the circumstances test of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313, not the balancing test approach of *Mathews* v. *Eldridge*, 424 U. S. 319, 335, supplies the appropriate analytical framework for the due process analysis. This Court has never viewed *Mathews* as announcing an all-embracing test for deciding due process claims, but has regularly turned

Syllabus

to *Mullane* when confronted with questions regarding the adequacy of the method used to give notice. In *Mullane*, notice by publication was constitutionally defective as to known persons whose whereabouts were also known, because it was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U. S., at 314, 319. The FBI's notice, sent by certified mail to a prison with procedures for delivering mail to the inmate, was so calculated. Contrary to petitioner's argument, *Mennonite Bd. of Missions* v. *Adams*, 462 U. S. 791, 796–797, says that a State *must attempt to provide* actual notice, not that it *must provide* actual notice. And none of this Court's cases cited by either party have required actual notice in proceedings such as this. Instead, the Government has been allowed to defend the "reasonableness and hence the constitutional validity of any chosen method . . . on the ground that it is in itself reasonably certain to inform those affected." *Mullane*, *supra*, at 315. The Due Process Clause does not require heroic efforts by the Government to assure the notice's delivery, nor does it require the Government to substitute petitioner's proposed procedures that would have required verification of receipt for those in place at the FCI while he was there. Even if the current procedures improve delivery to some degree, this Court has never held that improvements in the reliability of new procedures necessarily demonstrate the infirmity of those that were replaced. Pp. 167–173.

223 F. 3d 422, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 173.

Allison M. Zieve, by appointment of the Court, 532 U. S. 940, argued the cause for petitioner. With her on the briefs was *Alan B. Morrison.*

Jeffrey P. Minear argued the cause for the United States. With him on the brief were *Solicitor General Olson, Assistant Attorney General Chertoff, Deputy Solicitor General Dreeben*, and *William C. Brown.**

**Julia M. Carpenter* filed a brief for the DKT Liberty Project as *amicus curiae* urging reversal.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case concerns the adequacy of the means employed by the Federal Bureau of Investigation (FBI) to provide notice to a federal prisoner of his right to contest the administrative forfeiture of property seized during the execution of a search warrant for the residence where he was arrested.

In April 1986, officers of the FBI arrested petitioner Larry Dean Dusenbery at a house trailer in Atwater, Ohio. Later that day, they obtained and executed a search warrant, seizing drugs, drug paraphernalia, several firearms, a ballistic knife, an automobile registered in the name of petitioner's stepmother, and various other items of personal property. Among these was $21,939 in cash, $394 of which had been found on petitioner's person, $7,500 in the inside pocket of a coat in the dining area and $14,045 in a briefcase found on the floor in the living room.

Two months later, petitioner pleaded guilty in the United States District Court for the Northern District of Ohio to a charge of possession with intent to distribute 813 grams of cocaine in violation of 21 U. S. C. § 841(a)(1) (1988 ed.). He was sentenced to 12 years of imprisonment followed by 6 years of special parole. Two years later, the United States, no longer expecting the firearms and knife to be used as evidence in a future prosecution, and unable to determine their rightful owner, sought and obtained an order from the District Court authorizing the FBI to destroy them. The FBI also began the process of administratively forfeiting the cash and the automobile.

At this time, designated agents of the FBI were allowed to dispose of property seized pursuant to the Controlled Substances Act, 84 Stat. 1242, 21 U. S. C. § 801 *et seq.* (1988 ed.), without initiating judicial proceedings if the property's value did not exceed $100,000, and if no person claimed an interest

in the property within 20 days after the Government published notice of its intention to forfeit and sell or otherwise dispose of it. § 881(a)(6) (subjecting to forfeiture all proceeds traceable to an unlawful exchange for a controlled substance and all moneys, negotiable instruments, and securities traceable to such an exchange); § 881(d) (providing that laws relating to summary and judicial forfeiture for violation of the customs laws apply to controlled substance forfeitures); 19 U. S. C. §§ 1607–1609 (1988 ed.) (setting forth customs law requirements for summary forfeitures).

To effect such a forfeiture, the statute required the agency to send written notice of the seizure together with information on the applicable forfeiture procedures to each party who appeared to have an interest in the property. § 1607(a). It also required the publication for at least three successive weeks of a similar notice in a newspaper of general circulation in the judicial district in which the forfeiture proceeding was brought. *Ibid.;* 21 CFR § 1316.75 (1988). The FBI sent letters of its intention to forfeit the cash by certified mail addressed to petitioner care of the Federal Correctional Institution (FCI) in Milan, Michigan, where he was then incarcerated; to the address of the residence where petitioner was arrested; and to an address in Randolph, Ohio, the town where petitioner's mother lived. App. 21–23. It placed the requisite legal notice in three consecutive Sunday editions of the Cleveland Plain Dealer. *Id.*, at 24–30. Similar practices were followed with respect to the proposed forfeiture of the car. Brief for Petitioner 3. The FBI received no response to these notices within the time allotted, and so declared the items administratively forfeited. *Ibid.;* App. 15. An FBI agent turned over the cash to the United States Marshals Service on December 13, 1988. *Id.*, at 16–17.

Nearly five years later, petitioner moved in the District Court pursuant to Rule 41(e) of the Federal Rules of Crimi-

nal Procedure[1] seeking return of all the property and funds seized in his criminal case. The United States responded that all of the items of petitioner's property that were not used in his drug business had been returned to him and that other items seized had long since been forfeited to the Government. The District Court denied the motion, reasoning that any challenge to the forfeiture proceedings should have been brought in a civil action, not as a motion ancillary to petitioner's now-closed criminal case. Case No. 5:95–CV–1872 (ND Ohio, Oct. 5, 1995).

The Court of Appeals for the Sixth Circuit vacated the District Court's judgment and remanded for further proceedings. Judgt. order reported at 97 F. 3d 1451 (1996), App. 31. The Court of Appeals agreed that petitioner could not pursue his claim through a Rule 41(e) motion since the criminal proceedings against him had been completed. It held that the District Court abused its discretion, however, by not construing the motion as a civil complaint seeking equitable relief for a due process challenge to adequacy of the notice of the administrative forfeiture.

Following remand, the District Court entered an order allowing discovery and subsequently presided over a telephone deposition of James Lawson, an Inmate Systems Officer who began to work in the mailroom at FCI Milan early in 1988 and who had submitted an affidavit in the case. Lawson testified that he signed the certified mail receipt for the FBI's notice to petitioner regarding the cash. App. 49–50. He also testified about the procedures within FCI Milan for accepting, logging, and delivering certified mail addressed to inmates. *Id.*, at 50. Lawson explained that the

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[1] Rule 41(e) provides that "[a] person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property."

procedure would have been for him to log the mail in, for petitioner's "Unit Team" to sign for it, and for it then to be given to petitioner. *Id.*, at 51. But he said that a paper trail no longer existed because the Bureau of Prisons (BOP) had a policy of holding prison logbooks for only one year after they were closed.[2] *Id.*, at 51–52.

Both parties moved for summary judgment. The District Court ruled that the Government's sending of notice by certified mail to petitioner's place of incarceration satisfied his due process rights as to the cash. Case No. 5:95–CV–1872 (ND Ohio, Jan. 19, 1999). The Court of Appeals affirmed. 223 F. 3d 422 (CA6 2000). Citing *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), it held that the Government's notice of the cash forfeiture comported with due process even in the absence of proof that the mail actually reached petitioner. 223 F. 3d, at 424.

Because Courts of Appeals have reached differing conclusions about what the Due Process Clause requires of the United States when it seeks to provide notice to a federal inmate of its intention to forfeit property in which the inmate appears to have an interest,[3] we granted certiorari to

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[2] In a letter received before argument, the Solicitor General advised us that the BOP now requires the retention of certified mail logbooks for 11 years in accordance with its implementation of Government record retention policies under the Federal Records Act of 1950, 44 U. S. C. §2901 *et seq.* (1994 ed.).

[3] See, *e. g.*, *Whiting* v. *United States*, 231 F. 3d 70, 76 (CA1 2000) (due process satisfied by Government's sending certified letter to inmate at his prison facility absent proof that mail delivery was unreliable); *Yeung Mung Weng* v. *United States*, 137 F. 3d 709, 715 (CA2 1998) (mailed notice to custodial institution inadequate unless in fact delivered to the intended recipient); *United States* v. *One Toshiba Color Television*, 213 F. 3d 147, 155 (CA3 2000) (en banc) (Government bears burden of demonstrating the existence of procedures that are reasonably calculated to ensure that actual notice will be given); *United States* v. *Minor*, 228 F. 3d 352, 358 (CA4 2000) (endorsing *One Toshiba Color Television*, *supra*); *United States* v. *Woodall*, 12 F. 3d 791, 794–795 (CA8 1993) (requiring actual notice to defendant or his counsel of agency's intent to forfeit property); *United States*

consider the adequacy of the FBI's notice to petitioner of its intended forfeiture of the cash. 531 U. S. 1189 (2001). We now affirm the judgment below.

The Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person of property without "due process of law." From these "cryptic and abstract words," *Mullane*, *supra*, at 313, we have determined that individuals whose property interests are at stake are entitled to "notice and an opportunity to be heard." *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 48 (1993).

Petitioner urges that, in analyzing his due process claim, we follow the approach articulated in *Mathews* v. *Eldridge*, 424 U. S. 319 (1976). Brief for Petitioner 12; Reply Brief for Petitioner 7. There we spoke of a balancing of three factors: (1) the private interest that will be affected by the official action, (2) a cost-benefit analysis of the risks of an erroneous deprivation versus the probable value of additional safeguards, and (3) the Government's interest, including the function involved and any fiscal and administrative burdens associated with using different procedural safeguards. 424 U. S., at 335. The United States, on the other hand, urges us to apply the method set forth in *Mullane*, *supra*, which espouses a more straightforward test of reasonableness under the circumstances. Brief for United States 27.

We think *Mullane* supplies the appropriate analytical framework. The *Mathews* balancing test was first conceived in the context of a due process challenge to the adequacy of administrative procedures used to terminate Social Security disability benefits. Although we have since invoked *Mathews* to evaluate due process claims in other

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v. *Real Property*, 135 F. 3d 1312, 1315 (CA9 1998) (adequate to send summons by certified mail to jail with procedures for distributing mail directly to the inmate); *United States* v. *Clark*, 84 F. 3d 378, 381 (CA10 1996) (sufficient to send certified mail to prisoner at jail where he was located).

contexts, see *Medina* v. *California*, 505 U. S. 437, 444 (1992) (citing cases), we have never viewed *Mathews* as announcing an all-embracing test for deciding due process claims. Since *Mullane* was decided, we have regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice. See, *e. g.*, *New York City* v. *New York, N. H. & H. R. Co.*, 344 U. S. 293, 296 (1953); *Walker* v. *City of Hutchinson*, 352 U. S. 112, 115 (1956); *Schroeder* v. *City of New York*, 371 U. S. 208, 210 (1962); *Robinson* v. *Hanrahan*, 409 U. S. 38, 39 (1972) *(per curiam)*; *Greene* v. *Lindsey*, 456 U. S. 444, 448 (1982); *Mennonite Bd. of Missions* v. *Adams*, 462 U. S. 791, 797 (1983); *Tulsa Professional Collection Services, Inc.* v. *Pope*, 485 U. S. 478, 484 (1988). We see no reason to depart from this well-settled practice.

Mullane itself involved a due process challenge to the constitutional sufficiency of notice to beneficiaries on judicial settlement of accounts by the trustee of a common trust fund established under state law. A trustee of such a common trust fund sought a judicial decree settling its accounts as against all parties having an interest in the fund. The only notice of the application for this decree was by court-ordered publication in a newspaper for four successive weeks. 339 U. S., at 309–310. We held that this notice was constitutionally defective as to known persons whose whereabouts were also known, because it was not "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.*, at 314, 319; see also *id.*, at 315 ("The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it").

Was the notice in this case "reasonably calculated under all the circumstances" to apprise petitioner of the pendency of the cash forfeiture? The Government here carried its burden of showing the following procedures had been used to give notice. The FBI sent certified mail addressed to

petitioner at the correctional facility where he was incarcerated. At that facility, prison mailroom staff traveled to the city post office every day to obtain all the mail for the institution, including inmate mail. App. 36. The staff signed for all certified mail before leaving the post office. Once the mail was transported back to the facility, certified mail was entered in a logbook maintained in the mailroom. *Id.*, at 37. A member of the inmate's Unit Team then signed for the certified mail to acknowledge its receipt before removing it from the mailroom, and either a Unit Team member or another staff member distributed the mail to the inmate during the institution's "mail call." *Id.*, at 37, 51.

Petitioner does not seriously contest the FBI's use of the postal service to send its certified letter to him, a method our cases have recognized as adequate for known addressees when we have found notice by publication insufficient.[4] Tr. of Oral Arg. 11 ("This case is not really a mailed notice case because the procedures that are inadequate are the procedures that happened after the mailing"). Instead, he argues that the notice was insufficient because due process generally requires "actual notice" to interested parties prior to forfeiture, which he takes to mean actual receipt of notice.[5] Brief for Petitioner 8, 15, 18–19; see also Tr. of Oral Arg. 23.

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[4] *E. g.*, *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 319 (1950) (noting that the mails "are recognized as an efficient and inexpensive means of communication"); *Walker* v. *City of Hutchinson*, 352 U. S. 112, 116 (1956); *Schroeder* v. *City of New York*, 371 U. S. 208, 214 (1962); *Mennonite Bd. of Missions* v. *Adams*, 462 U. S. 791, 798 (1983); *Tulsa Professional Collection Services, Inc.* v. *Pope*, 485 U. S. 478, 490 (1988).

[5] The Government's brief notes that the term "actual notice" is not free from ambiguity as used by this Court in cases such as *Tulsa*, *supra*, and by other courts. Brief for United States 20, n. 12 (stating that the term has been used both to distinguish notice by mail from notice by publication and to refer to the actual receipt of the notice by the intended recipient); see also Black's Law Dictionary 1087 (7th ed. 1999) (defining "actual notice" as "[n]otice given directly to, or received personally by, a party"). We think the best way to avoid this confusion is to equate, as petitioner does, "actual notice" with "receipt of notice."

For this proposition he cites *Mennonite Bd. of Missions*, 462 U. S., at 796–797. But the only sentence in *Mennonite* arguably supporting petitioner's view appears in a footnote. That sentence reads: "Our cases have required the State to make efforts to provide actual notice to all interested parties comparable to the efforts that were previously required only in *in personam* actions." *Id.*, at 797, n. 3. It does not say that the State *must provide* actual notice, but that it *must attempt to provide* actual notice. Since *Mennonite* concluded that mailed notice of a pending tax sale to a mortgagee of record was constitutionally sufficient, *id.*, at 799, the sentence is at best inconclusive dicta for the view petitioner espouses.

We note that none of our cases cited by either party has required actual notice in proceedings such as this. Instead, we have allowed the Government to defend the "reasonableness and hence the constitutional validity of any chosen method . . . on the ground that it is in itself reasonably certain to inform those affected." *Mullane*, 339 U. S., at 315.

Petitioner argues that because he was housed in a federal prison at the time of the forfeiture, the FBI could have made arrangements with the BOP to assure the delivery of the notice in question to him. Brief for Petitioner 17. But it is hard to see why such a principle would not also apply, for example, to members of the Armed Forces both in this country and overseas. Undoubtedly the Government could make a special effort in any case (just as it did in the movie "Saving Private Ryan") to assure that a particular piece of mail reaches a particular individual who is in one way or another in the custody of the Government. It could, for example, have allowed petitioner to make an escorted visit to the post office himself in order to sign for his letter. But the Due Process Clause does not require such heroic efforts by the Government; it requires only that the Government's effort be "reasonably calculated" to apprise a party of the pendency of the action; " '[t]he criterion is not the possibility of conceiv-

able injury but the just and reasonable character of the requirements . . . .'" *Mullane, supra,* at 315.

Nor does the Due Process Clause require the Government to substitute the procedures proposed by petitioner for those in place at FCI Milan in 1988. See Brief for Petitioner 17 (suggesting that the Government could send the notice to a prison official with a request that a prison employee watch the prisoner open the notice, cosign a receipt, and mail the signed paper back to the agency from which it came). The suggested procedures would work primarily to bolster the Government's ability to establish that the prisoner actually received notice of the forfeiture, a problem petitioner perceives to be the FCI Milan's procedures' primary defect. See Tr. of Oral Arg. 15 (explaining that the problem is that "[t]he procedure doesn't require verification of delivery"). But as we have noted above, our cases have never required actual notice. The facts of the present case, moreover, illustrate the difficulty with such a requirement. The letter in question was sent to petitioner in 1988, but the claim of improper notice was first asserted in 1993. What might be reasonably fresh in the minds of all parties had the question arisen contemporaneously will surely be stale five years later. The issue would often turn on disputed testimony as to whether the letter was in fact delivered to petitioner. The title to property should not depend on such vagaries.

JUSTICE GINSBURG's dissent does not contend, as petitioner does, that due process could be satisfied in this case only with actual notice. It makes an alternative argument that the FBI's notice was constitutionally flawed because it was "'substantially less likely to bring home notice' than a feasible substitute," *post,* at 174 (quoting *Mullane, supra,* at 314–315)—namely, the methods used currently by the BOP, which generally require an inmate to sign a logbook acknowledging delivery, see *post,* at 180, 181–182 (describing current BOP procedures and noting the practicability of BOP Unit Team member's "linger[ing]" a little longer to secure an in-

mate's signature). Just how requiring the *end recipient* to sign for a piece of mail substantially improves the reliability of the delivery procedures *leading up to* that person's receipt, JUSTICE GINSBURG's dissent does not persuasively explain. Nor is there any probative evidence to this effect in the record.[6]

Even if one accepts that the BOP's current procedures improve delivery to some degree, our cases have never held that improvements in the reliability of new procedures necessarily demonstrate the infirmity of those that were replaced. Other areas of the law, moreover, have for strong policy reasons resisted rules crediting the notion that, "'because the world gets wiser as it gets older, therefore it was foolish before.'" Advisory Committee's Notes on Fed. Rule Evid. 407, 28 U. S. C. App., p. 864 (1994 ed.) (quoting *Hart* v. *Lancashire & Yorkshire R. Co.*, 21 Law Times Rep. (n. s.) 261, 263 (1869), and explaining that Rule 407's prohibition against use of subsequent remedial measures to prove fault attempts to avoid discouraging persons from taking steps to further safety). In this case, we believe the same principle supports our conclusion that the Government ought not be penalized and told to "try harder," *post*, at 180, simply because the BOP has since upgraded its policies.

Here, the use of the mail addressed to petitioner at the penitentiary was clearly acceptable for much the same reason we have approved mailed notice in the past. Short of allowing the prisoner to go to the post office himself, the remaining portion of the delivery would necessarily depend on a system in effect within the prison itself relying on prison staff. We think the FBI's use of the system de-

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[6] To try to show that there is a "significant risk," Brief for Petitioner 14, that notice mailed to a prison will not reach an inmate, petitioner has cited several cases from various Courts of Appeals involving postforfeiture challenges. As the Government argues, these cases, like petitioner's own suit here, involve only claims that notice was not received, not findings of nonreceipt.

scribed in detail above was "reasonably calculated, under all the circumstances, to apprise [petitioner] of the pendency of the action." *Mullane*, 339 U. S., at 314. Due process requires no more.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

"'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis* v. *Ordean*, 234 U. S. 385, 394 [(1914)]. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950). Today's decision diminishes the safeguard of notice, affording an opportunity to be heard, before one is deprived of property. As adequate to notify prisoners that the Government seeks forfeiture of their property, the Court condones a procedure too lax to reliably ensure that a prisoner will receive a legal notice sent to him. The Court does so despite the Government's total control of a prison inmate's location, and the evident feasibility of tightening the notice procedure "as [would] one desirous of actually informing [the prisoner]." *Id.*, at 315. Because the Court, without warrant in fact or law, approves a procedure "less likely to bring home notice" than a feasible alternative, *ibid.*, I dissent.

I

The Court correctly identifies the foundational case on reasonable notice as a due process requirement, *Mullane* v. *Central Hanover Bank & Trust Co.*, and the core instruction: "[D]eprivation of . . . property by adjudication [must] be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.*, at 313. Further, the Court recognizes that petitioner Dusenbery's complaint does not

rest on the Government's use of the postal service to dispatch, from the Federal Bureau of Investigation (FBI) to the Federal Correctional Institution (FCI) in Milan, Michigan, notice of an impending forfeiture. *Ante,* at 169. Were this case about the adequacy of the transmission of information from the FBI to the FCI, swift summary judgment for the Government, I agree, would be in order. But the case we confront is not about notice to the prison, the warden, or the prison mailroom personnel. It is about the adequacy of notice to an individual held in the Government's custody, a prisoner whose location the Government at all times knows and tightly controls.

What process did the Government provide for getting the FBI's forfeiture notice from the FCI's mailroom to prisoner Dusenbery's cell? On that key transmission the record is bare. It contains no statement by FCI Milan's warden concerning any set of safeguards routinely employed. The Government presented only the affidavit and telephone deposition of James Curtis Lawson, an "Inmate Systems Officer" assigned to FCI Milan's mailroom. App. 36–37, 46–53. On the mailroom to prisoner transmission, Lawson said simply this: "The [Housing] Unit Team member or a correctional staff member will [after signing the mailroom logbook] distribute the mail to the inmates during the institution's mail call." App. 37. Lawson did not know whether notice was in fact delivered to Dusenbery. Nor would he have such knowledge or information regarding any other prisoner. As Lawson clarified on deposition, he was not acquainted with particular practices or systems governing mail once it left the mailroom, because that was not "pertinent to [his] department." App. 52. According to Lawson, "[t]hat would be case workers' responsibility," *ibid.;* but no caseworker filled in the evidentiary gap.

Was the prison to prisoner mode of transmission described by Officer Lawson "substantially less likely to bring home notice" than a feasible substitute that would place no "im-

practical obstacles" in the Government's way? *Mullane*, 339 U. S., at 314–315. The answer, in my judgment, is certainly yes. Before detailing why that is my view, I will examine what the Court does not elaborate: In full scope, what does *Mullane*, the foundational case, teach about the nexus to the forum and notice to interested persons necessary to make an adjudication fair and workable, and thus compatible with due process?[1]

II

Mullane was a proceeding in which the trustee of a common trust fund sought from a New York Surrogate Court an order settling all questions concerning the management of the common fund during a statutorily specified accounting period.[2] Many of the beneficiaries resided outside New York. Could a New York court adjudicate such a case despite the large numbers of nonresidents affected? And if a New York court could entertain the case, would notice by publication, for which the New York statute provided, suffice to inform beneficiaries of the proceeding? The Court recognized that these were separate questions calling for discrete inquiries.

New York had jurisdiction to adjudicate despite the dispersion of trust beneficiaries among several States, the Court explained, because the trust "exist[ed] by the grace of [New York's] laws and [was] administered under the supervision of its courts." *Id.*, at 313. If New York could not take

[1] In briefing this case, the Government questioned whether it is "permissible for courts to approach the due process issue here as a matter of what is 'fair' or workable." Brief for United States 31. Any doubt on that score should be dispelled. *Mullane* carefully explained that the due process requirement at stake is not merely permissive, it *demands* that both fairness and practicality be taken into account. See 339 U. S., at 313–320.

[2] The decree sought by the *Mullane* trustee would terminate "every right which beneficiaries would otherwise have against the trust company, either as trustee of the common fund or as trustee of any individual trust, for improper management of the common trust fund during the period covered by the accounting." *Id.*, at 311.

hold of the case, no other State would be better situated to do so. Without a forum for periodic settlement of the trustee's accounts, the common fund device would be unworkable. Under the circumstances, New York's interest "in providing means [periodically] to close trusts [of the kind involved in *Mullane* was] . . . so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants." *Ibid.*

Having thus settled the question of the nexus between the forum and the controversy necessary to establish jurisdiction to adjudicate, the Court turned to the means by which potentially affected persons must be apprised of the proceeding: "Quite different from the question of a state's power to discharge trustees," the Court began, "is that of the [full] opportunity it must give beneficiaries to contest." *Ibid.*

"Personal service of written notice," the Court acknowledged, "is the classic form of notice always adequate in any type of proceeding." *Ibid.* But that classic form, the Court next developed, "has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents." *Id.*, at 314. For beneficiaries whose interests or addresses were unknown to the trustee, notice by publication would do, *faute de mieux*. *Id.*, at 318. But "[a]s to known present beneficiaries of known place of residence," *Mullane* instructed, notice by publication would not do. *Ibid.* Personal service on "the large number of known resident or nonresident beneficiaries," however, would "seriously interfere with the proper administration of the fund." *Id.*, at 318–319 (delay as well as expense rendered such service impractical). For that group, the Court indicated, "ordinary mail to the record addresses," which might be sent with periodic income remittances, was the minimal due process requirement. *Id.*, at 318. The risk that notice would not reach even all known beneficiaries, the Court reasoned, was justifiable, for the common trust

"presupposes a large number of small interests. The individual interest does not stand alone but is identical with that of a class. The rights of each in the integrity of the fund and the fidelity of the trustee are shared by many other beneficiaries. Therefore notice reasonably certain to reach most of those interested in objecting is likely to safeguard the interests of all, since any objection sustained would inure to the benefit of all." *Id.*, at 319.

In a series of cases following *Mullane*, the Court similarly condemned notice by publication or posting as not reasonably calculated to inform persons with known interests in a proceeding. See *Tulsa Professional Collection Services, Inc.* v. *Pope*, 485 U. S. 478 (1988) (notice by publication inadequate as to estate creditors whose identities were known or ascertainable by reasonably diligent efforts); *Mennonite Bd. of Missions* v. *Adams*, 462 U. S. 791 (1983) (notice by publication and posting inadequate to inform real property mortgagee of a proceeding to sell the mortgaged property for nonpayment of taxes); *Greene* v. *Lindsey*, 456 U. S. 444 (1982) (posting summons on door of a tenant's apartment provided inadequate notice of eviction proceedings); *Schroeder* v. *City of New York*, 371 U. S. 208 (1962) (publication plus signs posted on trees inadequate to notify property owners of condemnation proceedings); *Walker* v. *City of Hutchinson*, 352 U. S. 112 (1956) (publication as sole notice to property owners inadequate to inform them of condemnation proceedings). In these cases, the Court identified mail service as a satisfactory supplement to statutory provisions for publication or posting. But the decisions, it bears note, do not bless mail notice as an adequate-in-all-circumstances substitute for personal service. They home in on the particular proceedings at issue and do not imply that in the mine-run civil action, a plaintiff may dispense with the straightforward, effective steps required to secure proof of service or waiver of formal service. See Fed. Rules Civ. Proc. 4(d), 4(*l*).

III

Returning to the instant case and the question *Mullane* identified as pivotal: Was the mail delivery procedure at FCI Milan "substantially less likely to bring home notice [to prison inmates]" than a "feasible . . . substitut[e]"? 339 U. S., at 315; cf. *Mennonite Bd.*, 462 U. S., at 803 (O'CONNOR, J., dissenting) (ability of "members of a particular class . . . to safeguard their interests . . . must be taken into account when we consider the 'totality of the circumstances,' as required by *Mullane*"). Prisoner Dusenbery's situation differs dramatically from that of persons for whom we suggested ordinary mail service, without more, would suffice. Those differences, I am persuaded, are dispositive.

A beneficiary not in receipt of actual notice in *Mullane* would nevertheless be protected, in significant measure, by beneficiaries who did receive notice and might have advanced objections shared by the large class of similarly situated persons. Moreover, the Surrogate's Court was obliged to review the trustee's accounting before approving it. In contrast, Dusenbery's alleged ownership interest stands alone. No others are similarly situated. Dusenbery claims that the money the FBI seized at his home was not traceable to an unlawful exchange for a controlled substance. See 21 U. S. C. § 881(a)(6) (1988 ed.). Absent notice of the forfeiture proceeding, Dusenbery had no opportunity to present that claim before an impartial forum. See 19 U. S. C. § 1609 (1988 ed.) (if no claim is filed within the prescribed time, the Government shall declare the property forfeited).

Nor can any undue hardship justify a less than careful endeavor actually to inform Dusenbery that his property is the subject of an impending forfeiture. The agency responsible for giving notice of the forfeiture, here, the FBI, is part of the same Government as the prisoner's custodian, the Bureau of Prisons (BOP). As the Second Circuit observed, "[w]hen [a federal] investigating agency [seeks] a prisoner's cooperation in testifying against some important wrongdoer,

it has no difficulty delivering the message in a manner that insures receipt." *Weng* v. *United States*, 137 F. 3d 709, 715 (1998). Similarly, the federal forfeiting agency should encounter no difficulty in "secur[ing] the [BOP's] cooperation in assuring that the notice will be delivered to the [prisoner] and that a reliable record of the delivery will be created." *Ibid.*

A further factor counsels care to inform a prisoner that his Government is proceeding against him or his property. A prisoner receives his mail only through the combined good offices of *two* bureaucracies which he can neither monitor nor control: The postal service must move the mail from the sender to the prison, and the prison must then move the mail from the prison gates to the prisoner's hands. That the first system can be relied upon does not imply that the second is acceptable. See *United States* v. *One Toshiba Color Television*, 213 F. 3d 147, 154 (CA3 2000); accord, *Weng*, 137 F. 3d, at 715; cf. *Houston* v. *Lack*, 487 U. S. 266, 271 (1988) (Court recognized that "the *pro se* prisoner has no choice but to entrust the forwarding of [mail] to prison authorities whom he cannot control or supervise and who may have every incentive to delay"; Court therefore held that *pro se* prisoner's notice of appeal must be regarded as "filed" when delivered to prison authorities for mailing). In the cases in which we indicated that mail notice would be sufficient, by contrast, receipt hinged only upon the dependability of the postal service, "upon which prudent men will ordinarily rely in the conduct of important affairs." *Greene*, 456 U. S., at 455; see also *Mullane*, 339 U. S., at 319 ("[T]he mails today are recognized as an efficient and inexpensive means of communication."); United States Postal Service, 2000 Comprehensive Statement on Postal Operations 91 (Table 5.1) (on-time delivery rate of first class mail between 87% and 94%).

The majority asserts that "[t]he Government here carried its burden of showing the . . . procedures . . . used to give notice." *Ante*, at 168. As to the prison to prisoner trans-

mission, that assertion is groundless, for the Government carried no burden whatever. It introduced nothing to show the reasonableness or reliability of the mailroom to cell delivery at FCI Milan at the time of the forfeiture in question. See *supra*, at 174.

Beyond doubt, the Government can try harder, without undue inconvenience or expense. Indeed, it now does so: As the Government informed the Court on brief, prison employees currently "must not only record the receipt of the certified mail and its distribution, but the prisoner himself must sign a log book acknowledging delivery." Brief for United States 24 (citing BOP Program Statement 5800.10.409, 5800.10.409A (Nov. 3, 1995)). If a prisoner refuses to sign, a prison officer must document that refusal. BOP Operations Memorandum 035–99 (5800), p. 2 (July 19, 1999). The Government noted additionally that administrative forfeiture notices, along with "appropriately marked congressional, judicial, law enforcement, and attorney correspondence," are now marked "special mail," to be "opened only in the inmate's presence." Brief for United States 29, n. 19 (citing 28 CFR §540.12(c) (2001) and BOP Program Statement 5800.10.35).

The Government, of course, should not be "penalized" for upgrading its policies. See *ante*, at 172. It would be improper to brand the BOP's 1988 procedures deficient simply because those procedures have since been improved. Nevertheless, the new rules show that substantial improvements in reliability could have been had, in 1988 and years before, at minimal expense and inconvenience. Nor will it do to label these efforts a matter of executive grace. They undeniably provide a "feasible" means "substantially [more] likely to bring home notice" than FCI Milan's prior uncertain mailroom to prison cell practice. See *Mullane*, 339 U. S., at 315.[3]

[3]The majority suggests that it is necessary to "explain" how "requiring the *end recipient* to sign for a piece of mail substantially improves the reliability of the delivery procedures *leading up to* that person's

The Government would assign to Dusenbery the burden of showing that the mail delivery system inside the prison was unreliable at the relevant time. Brief for United States 23–24. The Court shies away from explicit agreement, for that is not what *Mullane* instructs. Rather, the party obliged to give notice—here, the Government—must adopt a method "reasonably calculated" to reach the intended recipient. See 339 U. S., at 318; *One Toshiba Color Television*, 213 F. 3d, at 155 (If the Government "chooses to rely on less than actual notice, it bears the burden of demonstrating the existence of procedures that are reasonably calculated to ensure that [actual] notice will be given."). The Government, staying "within the limits of practicability," *Mullane*, 339 U. S., at 318, now conforms to the foundational precedent; its prior practice fell short of the requirement that "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," *id.*, at 315.[4]

The majority is surely correct that the Due Process Clause does not require "heroic efforts" to ensure actual notice.

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receipt." *Ante*, at 172. The signature procedure now in place offers the FBI the same security that motivates any other postal customer to pay a surcharge for certified mail, return receipt requested: A sender who knows whether delivery to the addressee was accomplished can try again if the first effort fails. Moreover, if forfeiture cannot be had absent a logbook signature or documentation that the addressee refused to sign, the BOP will have every incentive to make sure its internal procedures guarantee reliable delivery. The BOP's incentive fades if all that is required is a general statement by a mailroom employee that it is prison policy to deliver inmate mail. See *supra*, at 174.

[4] The majority's concern that a more demanding proof of notice requirement would undermine finality, *ante*, at 171, is baffling: Disputes over whether notice was sent or received would be diminished, not encouraged, by requiring proof of notice by signature. Under the regime the majority tolerates, notice may be delivered or not depending on the diligence or carelessness of the prison administration and the reliability or neglect of its Unit Teams. "The title to property should not depend on such vagaries." *Ibid.*

Ante, at 170. But the BOP's recently installed proof of delivery procedures require no convoys of armored vehicles to "escor[t]" prisoners to the post office. *Ibid.* There is little danger that Hollywood will confuse the rescuers of Private Ryan, see *ibid.*, with a BOP Unit Team member, putatively delivering certified mail to inmates in his charge at least since 1988, instructed a decade later to linger for the additional moments required to secure for each delivery a signature in a logbook.[5] The Due Process Clause requires nothing of the Government in cases of this genre beyond the practicable, efficient, and inexpensive reform the BOP has already adopted.

Notice consistent with due process "will vary with circumstances and conditions." *Mennonite Bd.*, 462 U. S., at 802 (O'CONNOR, J., dissenting) (emphasis deleted) (internal quotation marks omitted). Given the circumstances and conditions of imprisonment, the Government must have cause to be confident that legal notices to prisoners will be delivered inside the prison with the care "one desirous of actually informing the [addressee] might reasonably adopt to accomplish it." *Mullane*, 339 U. S., at 315. The uncertain mailroom to cell delivery system formerly in place at FCI Milan

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[5] The majority worries that a firmer rule on delivery might "also apply, for example, to members of the Armed Forces both in this country and overseas." *Ante*, at 170. Of course, many active-duty military personnel, both on and off military bases, maintain personal mailboxes and interact with local postal authorities as does any other resident. The majority is right that other members of the Armed Forces—soldiers in combat, for example—are in respects material to this case similarly situated to Dusenbery: Government authority determines their whereabouts and restricts their movements, and that same authority receives their mail at a central delivery location and must make arrangements to distribute it further. It is at least doubtful, however, that a soldier, oblivious to a pending action, would return home to find her property irrevocably forfeited to her Government because she had the misfortune to be in a combat zone too long.

fell short of that mark. Greater reliability could be achieved with modest effort. Because the Court finds that small but significant effort undue, I dissent.

Syllabus

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. *v.* WILLIAMS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 00–1089. Argued November 7, 2001—Decided January 8, 2002

Claiming to be unable to perform her automobile assembly line job because she was disabled by carpal tunnel syndrome and related impairments, respondent sued petitioner, her former employer, for failing to provide her with a reasonable accommodation as required by the Americans with Disabilities Act of 1990 (ADA), 42 U. S. C. § 12112(b)(5)(A). The District Court granted petitioner summary judgment, holding that respondent's impairment did not qualify as a "disability" under the ADA because it had not "substantially limit[ed]" any "major life activit[y]," § 12102(2)(A), and that there was no evidence that respondent had had a record of a substantially limiting impairment or that petitioner had regarded her as having such an impairment. The Sixth Circuit reversed, finding that the impairments substantially limited respondent in the major life activity of performing manual tasks. In order to demonstrate that she was so limited, said the court, respondent had to show that her manual disability involved a "class" of manual activities affecting the ability to perform tasks at work. Respondent satisfied this test, according to the court, because her ailments prevented her from doing the tasks associated with certain types of manual jobs that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time. In reaching this conclusion, the court found that evidence that respondent could tend to her personal hygiene and carry out personal or household chores did not affect a determination that her impairments substantially limited her ability to perform the range of manual tasks associated with an assembly line job. The court granted respondent partial summary judgment on the issue of whether she was disabled under the ADA.

Held: The Sixth Circuit did not apply the proper standard in determining that respondent was disabled under the ADA because it analyzed only a limited class of manual tasks and failed to ask whether respondent's impairments prevented or restricted her from performing tasks that are of central importance to most people's daily lives. Pp. 193–203.

(a) The Court's consideration of what an individual must prove to demonstrate a substantial limitation in the major life activity of performing manual tasks is guided by the ADA's disability definition.

"Substantially" in the phrase "substantially limits" suggests "considerable" or "to a large degree," and thus clearly precludes impairments that interfere in only a minor way with performing manual tasks. Cf. *Albertson's, Inc.* v. *Kirkingburg*, 527 U. S. 555, 565. Moreover, because "major" means important, "major life activities" refers to those activities that are of central importance to daily life. In order for performing manual tasks to fit into this category, the tasks in question must be central to daily life. To be substantially limited in the specific major life activity of performing manual tasks, therefore, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long term. See 29 CFR §§ 1630.2(j)(2)(ii)–(iii).

It is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment. Instead, the ADA requires them to offer evidence that the extent of the limitation caused by their impairment in terms of their own experience is substantial. 527 U. S., at 567. That the ADA defines "disability" "with respect to an individual," § 12102(2), makes clear that Congress intended the existence of a disability to be determined in such a case-by-case manner. See, *e. g.*, *Sutton* v. *United Air Lines, Inc.*, 527 U. S. 471, 483. An individualized assessment of the effect of an impairment is particularly necessary when the impairment is one such as carpal tunnel syndrome, in which symptoms vary widely from person to person. Pp. 196–199.

(b) The Sixth Circuit erred in suggesting that, in order to prove a substantial limitation in the major life activity of performing manual tasks, a plaintiff must show that her manual disability involves a "class" of manual activities, and that those activities affect the ability to perform tasks at work. Nothing in the ADA's text, this Court's opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working. While the Sixth Circuit addressed the different major life activity of performing manual tasks, its analysis erroneously circumvented *Sutton*, *supra*, at 491, by focusing on respondent's inability to perform manual tasks associated only with her job. Rather, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives. Also without support is the Sixth Circuit's assertion that the question of whether an impairment constitutes a disability is to be answered only by analyzing the impairment's effect in the workplace. That the ADA's "disability" definition applies not only to the portion of the ADA dealing with employment, but also to the other provisions dealing with public transportation and public accommoda-

Syllabus

tions, demonstrates that the definition is intended to cover individuals with disabling impairments regardless of whether they have any connection to a workplace. Moreover, because the manual tasks unique to any particular job are not necessarily important parts of most people's lives, occupation-specific tasks may have only limited relevance to the manual task inquiry. In this case, repetitive work with hands and arms extended at or above shoulder levels for extended periods, the manual task on which the Sixth Circuit relied, is not an important part of most people's daily lives. Household chores, bathing, and brushing one's teeth, in contrast, are among the types of manual tasks of central importance to people's daily lives, so the Sixth Circuit should not have disregarded respondent's ability to do these activities. Pp. 199–203.

224 F. 3d 840, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.

John G. Roberts, Jr., argued the cause for petitioner. With him on the briefs were *Jeffrey A. Savarise*, *John A. West*, and *Katherine A. Hessenbruch*.

Barbara B. McDowell argued the cause for the United States as *amicus curiae* in support of petitioner. On the brief were *Solicitor General Olson*, *Acting Assistant Attorney General Schiffer*, *Deputy Solicitor General Clement*, *Malcolm L. Stewart*, *Marleigh D. Dover*, and *Charles W. Scarborough*.

Robert Leslie Rosenbaum argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the American Trucking Associations, Inc., et al. by *Evan M. Tager* and *Miriam R. Nemetz*; for the Equal Employment Advisory Council et al. by *Ann Elizabeth Reesman*, *Katherine Y. K. Cheung*, *Jan S. Amundson*, and *Quentin Riegel*; and for Levi Strauss & Co. by *John C. Burgin, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt*, *Michael H. Gottesman*, and *Laurence Gold*; for the Association of Trial Lawyers of America by *Jeffrey Robert White*; for the Judge David L. Bazelon Center for Mental Health Law et al. by *John Townsend Rich*; for the National Council on Disability by *Arlene Mayerson* and *Nancy L. Perkins*; and for the National Employment Lawyers Association by *Noah D. Lebowitz* and *Paula A. Brantner*.

JUSTICE O'CONNOR delivered the opinion of the Court.

Under the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 328, 42 U. S. C. § 12101 *et seq.* (1994 ed. and Supp. V), a physical impairment that "substantially limits one or more . . . major life activities" is a "disability." 42 U. S. C. § 12102(2)(A) (1994 ed.). Respondent, claiming to be disabled because of her carpal tunnel syndrome and other related impairments, sued petitioner, her former employer, for failing to provide her with a reasonable accommodation as required by the ADA. See § 12112(b)(5)(A). The District Court granted summary judgment to petitioner, finding that respondent's impairments did not substantially limit any of her major life activities. The Court of Appeals for the Sixth Circuit reversed, finding that the impairments substantially limited respondent in the major life activity of performing manual tasks, and therefore granting partial summary judgment to respondent on the issue of whether she was disabled under the ADA. We conclude that the Court of Appeals did not apply the proper standard in making this determination because it analyzed only a limited class of manual tasks and failed to ask whether respondent's impairments prevented or restricted her from performing tasks that are of central importance to most people's daily lives.

I

Respondent began working at petitioner's automobile manufacturing plant in Georgetown, Kentucky, in August 1990. She was soon placed on an engine fabrication assembly line, where her duties included work with pneumatic tools. Use of these tools eventually caused pain in respondent's hands, wrists, and arms. She sought treatment at petitioner's in-house medical service, where she was diagnosed with bilateral carpal tunnel syndrome and bilateral tendinitis. Respondent consulted a personal physician who placed her on permanent work restrictions that precluded her from lifting more than 20 pounds or from "frequently lifting or

carrying . . . objects weighing up to 10 pounds," engaging in "constant repetitive . . . flexion or extension of [her] wrists or elbows," performing "overhead work," or using "vibratory or pneumatic tools." Brief for Respondent 2; App. 45–46.

In light of these restrictions, for the next two years petitioner assigned respondent to various modified duty jobs. Nonetheless, respondent missed some work for medical leave, and eventually filed a claim under the Kentucky Workers' Compensation Act. Ky. Rev. Stat. Ann. §342.0011 *et seq.* (1997 and Supp. 2000). The parties settled this claim, and respondent returned to work. She was unsatisfied by petitioner's efforts to accommodate her work restrictions, however, and responded by bringing an action in the United States District Court for the Eastern District of Kentucky alleging that petitioner had violated the ADA by refusing to accommodate her disability. That suit was also settled, and as part of the settlement, respondent returned to work in December 1993.

Upon her return, petitioner placed respondent on a team in Quality Control Inspection Operations (QCIO). QCIO is responsible for four tasks: (1) "assembly paint"; (2) "paint second inspection"; (3) "shell body audit"; and (4) "ED surface repair." App. 19. Respondent was initially placed on a team that performed only the first two of these tasks, and for a couple of years, she rotated on a weekly basis between them. In assembly paint, respondent visually inspected painted cars moving slowly down a conveyor. She scanned for scratches, dents, chips, or any other flaws that may have occurred during the assembly or painting process, at a rate of one car every 54 seconds. When respondent began working in assembly paint, inspection team members were required to open and shut the doors, trunk, and/or hood of each passing car. Sometime during respondent's tenure, however, the position was modified to include only visual inspection with few or no manual tasks. Paint second inspection required team members to use their hands to wipe each

painted car with a glove as it moved along a conveyor. *Id.*, at 21–22. The parties agree that respondent was physically capable of performing both of these jobs and that her performance was satisfactory.

During the fall of 1996, petitioner announced that it wanted QCIO employees to be able to rotate through all four of the QCIO processes. Respondent therefore received training for the shell body audit job, in which team members apply a highlight oil to the hood, fender, doors, rear quarter panel, and trunk of passing cars at a rate of approximately one car per minute. The highlight oil has the viscosity of salad oil, and employees spread it on cars with a sponge attached to a block of wood. After they wipe each car with the oil, the employees visually inspect it for flaws. Wiping the cars required respondent to hold her hands and arms up around shoulder height for several hours at a time.

A short while after the shell body audit job was added to respondent's rotations, she began to experience pain in her neck and shoulders. Respondent again sought care at petitioner's in-house medical service, where she was diagnosed with myotendinitis bilateral periscapular, an inflammation of the muscles and tendons around both of her shoulder blades; myotendinitis and myositis bilateral forearms with nerve compression causing median nerve irritation; and thoracic outlet compression, a condition that causes pain in the nerves that lead to the upper extremities. Respondent requested that petitioner accommodate her medical conditions by allowing her to return to doing only her original two jobs in QCIO, which respondent claimed she could still perform without difficulty.

The parties disagree about what happened next. According to respondent, petitioner refused her request and forced her to continue working in the shell body audit job, which caused her even greater physical injury. According to petitioner, respondent simply began missing work on a regular basis. Regardless, it is clear that on December 6, 1996, the

last day respondent worked at petitioner's plant, she was placed under a no-work-of-any-kind restriction by her treating physicians. On January 27, 1997, respondent received a letter from petitioner that terminated her employment, citing her poor attendance record.

Respondent filed a charge of disability discrimination with the Equal Employment Opportunity Commission (EEOC). After receiving a right to sue letter, respondent filed suit against petitioner in the United States District Court for the Eastern District of Kentucky. Her complaint alleged that petitioner had violated the ADA and the Kentucky Civil Rights Act, Ky. Rev. Stat. Ann. §344.010 *et seq.* (1997 and Supp. 2000), by failing to reasonably accommodate her disability and by terminating her employment. Respondent later amended her complaint to also allege a violation of the Family and Medical Leave Act of 1993 (FMLA), 107 Stat. 6, as amended, 29 U. S. C. §2601 *et seq.* (1994 ed. and Supp. V).

Respondent based her claim that she was "disabled" under the ADA on the ground that her physical impairments substantially limited her in (1) manual tasks; (2) housework; (3) gardening; (4) playing with her children; (5) lifting; and (6) working, all of which, she argued, constituted major life activities under the Act. Respondent also argued, in the alternative, that she was disabled under the ADA because she had a record of a substantially limiting impairment and because she was regarded as having such an impairment. See 42 U. S. C. §§12102(2)(B)–(C) (1994 ed.).

After petitioner filed a motion for summary judgment and respondent filed a motion for partial summary judgment on her disability claims, the District Court granted summary judgment to petitioner. Civ. A. No. 97–135 (Jan. 26, 1999), App. to Pet. for Cert. A–23. The court found that respondent had not been disabled, as defined by the ADA, at the time of petitioner's alleged refusal to accommodate her, and that she had therefore not been covered by the Act's protections or by the Kentucky Civil Rights Act, which is con-

strued consistently with the ADA. *Id.*, at A–29, A–34 to A–47. The District Court held that respondent had suffered from a physical impairment, but that the impairment did not qualify as a disability because it had not "substantially limit[ed]" any "major life activit[y]," 42 U. S. C. § 12102(2)(A). App. to Pet. for Cert. A–34 to A–42. The court rejected respondent's arguments that gardening, doing housework, and playing with children are major life activities. *Id.*, at A–35 to A–36. Although the court agreed that performing manual tasks, lifting, and working are major life activities, it found the evidence insufficient to demonstrate that respondent had been substantially limited in lifting or working. *Id.*, at A–36 to A–42. The court found respondent's claim that she was substantially limited in performing manual tasks to be "irretrievably contradicted by [respondent's] continual insistence that she could perform the tasks in assembly [paint] and paint [second] inspection without difficulty." *Id.*, at A–36. The court also found no evidence that respondent had had a record of a substantially limiting impairment, *id.*, at A–43, or that petitioner had regarded her as having such an impairment, *id.*, at A–46 to A–47.

The District Court also rejected respondent's claim that her termination violated the ADA and the Kentucky Civil Rights Act. The court found that even if it assumed that respondent was disabled at the time of her termination, she was not a "qualified individual with a disability," 42 U. S. C. § 12111(8) (1994 ed.), because, at that time, her physicians had restricted her from performing work of any kind, App. to Pet. for Cert. A–47 to A–50. Finally, the court found that respondent's FMLA claim failed, because she had not presented evidence that she had suffered any damages available under the FMLA. *Id.*, at A–50 to A–54.

Respondent appealed all but the gardening, housework, and playing-with-children rulings. The Court of Appeals for the Sixth Circuit reversed the District Court's ruling on whether respondent was disabled at the time she sought an

accommodation, but affirmed the District Court's rulings on respondent's FMLA and wrongful termination claims. 224 F. 3d 840 (2000). The Court of Appeals held that in order for respondent to demonstrate that she was disabled due to a substantial limitation in the ability to perform manual tasks at the time of her accommodation request, she had to "show that her manual disability involve[d] a 'class' of manual activities affecting the ability to perform tasks at work." *Id.*, at 843. Respondent satisfied this test, according to the Court of Appeals, because her ailments "prevent[ed] her from doing the tasks associated with certain types of manual assembly line jobs, manual product handling jobs and manual building trade jobs (painting, plumbing, roofing, etc.) that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." *Ibid.* In reaching this conclusion, the court disregarded evidence that respondent could "ten[d] to her personal hygiene [and] carr[y] out personal or household chores," finding that such evidence "does not affect a determination that her impairment substantially limit[ed] her ability to perform the range of manual tasks associated with an assembly line job," *ibid.* Because the Court of Appeals concluded that respondent had been substantially limited in performing manual tasks and, for that reason, was entitled to partial summary judgment on the issue of whether she was disabled under the Act, it found that it did not need to determine whether respondent had been substantially limited in the major life activities of lifting or working, *ibid.*, or whether she had had a "record of" a disability or had been "regarded as" disabled, *id.*, at 844.

We granted certiorari, 532 U. S. 970 (2001), to consider the proper standard for assessing whether an individual is substantially limited in performing manual tasks. We now reverse the Court of Appeals' decision to grant partial summary judgment to respondent on the issue of whether she was substantially limited in performing manual tasks at the

time she sought an accommodation. We express no opinion on the working, lifting, or other arguments for disability status that were preserved below but which were not ruled upon by the Court of Appeals.

II

The ADA requires covered entities, including private employers, to provide "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship." 42 U. S. C. § 12112(b)(5)(A) (1994 ed.); see also § 12111(2) ("The term 'covered entity' means an employer, employment agency, labor organization, or joint labor-management committee"). The Act defines a "qualified individual with a disability" as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." § 12111(8). In turn, a "disability" is:

> "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> "(B) a record of such an impairment; or
>
> "(C) being regarded as having such an impairment." § 12102(2).

There are two potential sources of guidance for interpreting the terms of this definition—the regulations interpreting the Rehabilitation Act of 1973, 87 Stat. 361, as amended, 29 U. S. C. § 706(8)(B) (1988 ed.), and the EEOC regulations interpreting the ADA. Congress drew the ADA's definition of disability almost verbatim from the definition of "handicapped individual" in the Rehabilitation Act, § 706(8)(B), and Congress' repetition of a well-established term generally implies that Congress intended the term to be construed

in accordance with pre-existing regulatory interpretations. *Bragdon* v. *Abbott*, 524 U. S. 624, 631 (1998); *FDIC* v. *Philadelphia Gear Corp.*, 476 U. S. 426, 437–438 (1986); *ICC* v. *Parker*, 326 U. S. 60, 65 (1945). As we explained in *Bragdon* v. *Abbott*, *supra*, at 631, Congress did more in the ADA than suggest this construction; it adopted a specific statutory provision directing as follows:

> "Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U. S. C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title." 42 U. S. C. § 12201(a) (1994 ed.).

The persuasive authority of the EEOC regulations is less clear. As we have previously noted, see *Sutton* v. *United Air Lines, Inc.*, 527 U. S. 471, 479 (1999), no agency has been given authority to issue regulations interpreting the term "disability" in the ADA. Nonetheless, the EEOC has done so. See 29 CFR §§ 1630.2(g)–(j) (2001). Because both parties accept the EEOC regulations as reasonable, we assume without deciding that they are, and we have no occasion to decide what level of deference, if any, they are due. See *Sutton* v. *United Air Lines, Inc.*, *supra*, at 480; *Albertson's, Inc.* v. *Kirkingburg*, 527 U. S. 555, 563, n. 10 (1999).

To qualify as disabled under subsection (A) of the ADA's definition of disability, a claimant must initially prove that he or she has a physical or mental impairment. See 42 U. S. C. § 12102(2)(A). The Rehabilitation Act regulations issued by the Department of Health, Education, and Welfare (HEW) in 1977, which appear without change in the current regulations issued by the Department of Health and Human Services, define "physical impairment," the type of impairment relevant to this case, to mean "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological;

musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine." 45 CFR § 84.3(j)(2)(i) (2001). The HEW regulations are of particular significance because at the time they were issued, HEW was the agency responsible for coordinating the implementation and enforcement of § 504 of the Rehabilitation Act, 29 U. S. C. § 794 (1994 ed. and Supp. V), which prohibits discrimination against individuals with disabilities by recipients of federal financial assistance. *Bragdon* v. *Abbott*, *supra*, at 632 (citing *Consolidated Rail Corporation* v. *Darrone*, 465 U. S. 624, 634 (1984)).

Merely having an impairment does not make one disabled for purposes of the ADA. Claimants also need to demonstrate that the impairment limits a major life activity. See 42 U. S. C. § 12102(2)(A) (1994 ed.). The HEW Rehabilitation Act regulations provide a list of examples of "major life activities" that includes "walking, seeing, hearing," and, as relevant here, "performing manual tasks." 45 CFR § 84.3(j)(2)(ii) (2001).

To qualify as disabled, a claimant must further show that the limitation on the major life activity is "substantia[l]." 42 U. S. C. § 12102(2)(A). Unlike "physical impairment" and "major life activities," the HEW regulations do not define the term "substantially limits." See Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 42 Fed. Reg. 22676, 22685 (1977) (stating HEW's position that a definition of "substantially limits" was not possible at that time). The EEOC, therefore, has created its own definition for purposes of the ADA. According to the EEOC regulations, "substantially limit[ed]" means "[u]nable to perform a major life activity that the average person in the general population can perform"; or "[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to

the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 CFR §1630.2(j) (2001). In determining whether an individual is substantially limited in a major life activity, the regulations instruct that the following factors should be considered: "[t]he nature and severity of the impairment; [t]he duration or expected duration of the impairment; and [t]he permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment." §§1630.2(j)(2)(i)–(iii).

III

The question presented by this case is whether the Sixth Circuit properly determined that respondent was disabled under subsection (A) of the ADA's disability definition at the time that she sought an accommodation from petitioner. 42 U. S. C. §12102(2)(A). The parties do not dispute that respondent's medical conditions, which include carpal tunnel syndrome, myotendinitis, and thoracic outlet compression, amount to physical impairments. The relevant question, therefore, is whether the Sixth Circuit correctly analyzed whether these impairments substantially limited respondent in the major life activity of performing manual tasks. Answering this requires us to address an issue about which the EEOC regulations are silent: what a plaintiff must demonstrate to establish a substantial limitation in the specific major life activity of performing manual tasks.

Our consideration of this issue is guided first and foremost by the words of the disability definition itself. "[S]ubstantially" in the phrase "substantially limits" suggests "considerable" or "to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66–67 (2d ed. 1989) ("substantial": "[r]elating to

or proceeding from the essence of a thing; essential"; "[o]f ample or considerable amount, quantity, or dimensions"). The word "substantial" thus clearly precludes impairments that interfere in only a minor way with the performance of manual tasks from qualifying as disabilities. Cf. *Albertson's, Inc.* v. *Kirkingburg*, 527 U. S., at 565 (explaining that a "mere difference" does not amount to a "significant restric-[tion]" and therefore does not satisfy the EEOC's interpretation of "substantially limits").

"Major" in the phrase "major life activities" means important. See Webster's, *supra*, at 1363 (defining "major" as "greater in dignity, rank, importance, or interest"). "Major life activities" thus refers to those activities that are of central importance to daily life. In order for performing manual tasks to fit into this category—a category that includes such basic abilities as walking, seeing, and hearing—the manual tasks in question must be central to daily life. If each of the tasks included in the major life activity of performing manual tasks does not independently qualify as a major life activity, then together they must do so.

That these terms need to be interpreted strictly to create a demanding standard for qualifying as disabled is confirmed by the first section of the ADA, which lays out the legislative findings and purposes that motivate the Act. See 42 U. S. C. § 12101. When it enacted the ADA in 1990, Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities." § 12101(a)(1). If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher. Cf. *Sutton* v. *United Air Lines, Inc.*, 527 U. S., at 487 (finding that because more than 100 million people need corrective lenses to see properly, "[h]ad Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much

higher number [than 43 million] disabled persons in the findings").

We therefore hold that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives. The impairment's impact must also be permanent or long term. See 29 CFR §§ 1630.2(j)(2)(ii)–(iii) (2001).

It is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment. Instead, the ADA requires those "claiming the Act's protection . . . to prove a disability by offering evidence that the extent of the limitation [caused by their impairment] in terms of their own experience . . . is substantial." *Albertson's, Inc.* v. *Kirkingburg, supra,* at 567 (holding that monocular vision is not invariably a disability, but must be analyzed on an individual basis, taking into account the individual's ability to compensate for the impairment). That the Act defines "disability" "with respect to an individual," 42 U. S. C. § 12102(2), makes clear that Congress intended the existence of a disability to be determined in such a case-by-case manner. See *Sutton* v. *United Air Lines, Inc., supra,* at 483; *Albertson's, Inc.* v. *Kirkingburg, supra,* at 566; cf. *Bragdon* v. *Abbott,* 524 U. S., at 641–642 (relying on unchallenged testimony that the respondent's HIV infection controlled her decision not to have a child, and declining to consider whether HIV infection is a *per se* disability under the ADA); 29 CFR pt. 1630, App. § 1630.2(j) (2001) ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual"); *ibid.* ("The determination of whether an individual is substantially limited in a major life activity must be made on a case-by-case basis").

An individualized assessment of the effect of an impairment is particularly necessary when the impairment is one whose symptoms vary widely from person to person. Carpal tunnel syndrome, one of respondent's impairments, is just such a condition. While cases of severe carpal tunnel syndrome are characterized by muscle atrophy and extreme sensory deficits, mild cases generally do not have either of these effects and create only intermittent symptoms of numbness and tingling. Carniero, Carpal Tunnel Syndrome: The Cause Dictates the Treatment, 66 Cleveland Clinic J. Medicine 159, 161–162 (1999). Studies have further shown that, even without surgical treatment, one quarter of carpal tunnel cases resolve in one month, but that in 22 percent of cases, symptoms last for eight years or longer. See DeStefano, Nordstrom, & Uierkant, Long-term Symptom Outcomes of Carpal Tunnel Syndrome and its Treatment, 22A J. Hand Surgery 200, 204–205 (1997). When pregnancy is the cause of carpal tunnel syndrome, in contrast, the symptoms normally resolve within two weeks of delivery. See Ouellette, Nerve Compression Syndromes of the Upper Extremity in Women, 17 J. of Musculoskeletal Medicine 536 (2000). Given these large potential differences in the severity and duration of the effects of carpal tunnel syndrome, an individual's carpal tunnel syndrome diagnosis, on its own, does not indicate whether the individual has a disability within the meaning of the ADA.

IV

The Court of Appeals' analysis of respondent's claimed disability suggested that in order to prove a substantial limitation in the major life activity of performing manual tasks, a "plaintiff must show that her manual disability involves a 'class' of manual activities," and that those activities "affec[t] the ability to perform tasks at work." See 224 F. 3d, at 843. Both of these ideas lack support.

The Court of Appeals relied on our opinion in *Sutton* v. *United Air Lines, Inc.*, for the idea that a "class" of manual

activities must be implicated for an impairment to substantially limit the major life activity of performing manual tasks. 224 F. 3d, at 843. But *Sutton* said only that "*[w]hen the major life activity under consideration is that of working,* the statutory phrase 'substantially limits' requires . . . that plaintiffs allege they are unable to work in a broad class of jobs." 527 U. S., at 491 (emphasis added). Because of the conceptual difficulties inherent in the argument that working could be a major life activity, we have been hesitant to hold as much, and we need not decide this difficult question today. In *Sutton*, we noted that even assuming that working is a major life activity, a claimant would be required to show an inability to work in a "broad range of jobs," rather than a specific job. *Id.*, at 492. But *Sutton* did not suggest that a class-based analysis should be applied to any major life activity other than working. Nor do the EEOC regulations. In defining "substantially limits," the EEOC regulations only mention the "class" concept in the context of the major life activity of working. 29 CFR § 1630.2(j)(3) (2001) ("With respect to the major life activity of *working[,]* [t]he term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities"). Nothing in the text of the Act, our previous opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working.

While the Court of Appeals in this case addressed the different major life activity of performing manual tasks, its analysis circumvented *Sutton* by focusing on respondent's inability to perform manual tasks associated only with her job. This was error. When addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the

claimant is unable to perform the tasks associated with her specific job. Otherwise, *Sutton*'s restriction on claims of disability based on a substantial limitation in working will be rendered meaningless because an inability to perform a specific job always can be recast as an inability to perform a "class" of tasks associated with that specific job.

There is also no support in the Act, our previous opinions, or the regulations for the Court of Appeals' idea that the question of whether an impairment constitutes a disability is to be answered only by analyzing the effect of the impairment in the workplace. Indeed, the fact that the Act's definition of "disability" applies not only to Title I of the Act, 42 U. S. C. §§ 12111–12117 (1994 ed.), which deals with employment, but also to the other portions of the Act, which deal with subjects such as public transportation, §§ 12141–12150, 42 U. S. C. §§ 12161–12165 (1994 ed. and Supp. V), and privately provided public accommodations, §§ 12181–12189, demonstrates that the definition is intended to cover individuals with disabling impairments regardless of whether the individuals have any connection to a workplace.

Even more critically, the manual tasks unique to any particular job are not necessarily important parts of most people's lives. As a result, occupation-specific tasks may have only limited relevance to the manual task inquiry. In this case, "repetitive work with hands and arms extended at or above shoulder levels for extended periods of time," 224 F. 3d, at 843, the manual task on which the Court of Appeals relied, is not an important part of most people's daily lives. The court, therefore, should not have considered respondent's inability to do such manual work in her specialized assembly line job as sufficient proof that she was substantially limited in performing manual tasks.

At the same time, the Court of Appeals appears to have disregarded the very type of evidence that it should have focused upon. It treated as irrelevant "[t]he fact that [respondent] can . . . ten[d] to her personal hygiene [and] carr[y]

out personal or household chores." *Ibid.* Yet household chores, bathing, and brushing one's teeth are among the types of manual tasks of central importance to people's daily lives, and should have been part of the assessment of whether respondent was substantially limited in performing manual tasks.

The District Court noted that at the time respondent sought an accommodation from petitioner, she admitted that she was able to do the manual tasks required by her original two jobs in QCIO. App. to Pet. for Cert. A–36. In addition, according to respondent's deposition testimony, even after her condition worsened, she could still brush her teeth, wash her face, bathe, tend her flower garden, fix breakfast, do laundry, and pick up around the house. App. 32–34. The record also indicates that her medical conditions caused her to avoid sweeping, to quit dancing, to occasionally seek help dressing, and to reduce how often she plays with her children, gardens, and drives long distances. *Id.*, at 32, 38–39. But these changes in her life did not amount to such severe restrictions in the activities that are of central importance to most people's daily lives that they establish a manual task disability as a matter of law. On this record, it was therefore inappropriate for the Court of Appeals to grant partial summary judgment to respondent on the issue of whether she was substantially limited in performing manual tasks, and its decision to do so must be reversed.

In its brief on the merits, petitioner asks us to reinstate the District Court's grant of summary judgment to petitioner on the manual task issue. In its petition for certiorari, however, petitioner did not seek summary judgment; it argued only that the Court of Appeals' reasons for granting partial summary judgment to respondent were unsound. This Court's Rule 14.1(a) provides: "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." The question of whether petitioner was entitled to summary judgment on the manual task issue is

therefore not properly before us. See *Irvine* v. *California*, 347 U. S. 128, 129–130 (1954).

Accordingly, we reverse the Court of Appeals' judgment granting partial summary judgment to respondent and remand the case for further proceedings consistent with this opinion.

So ordered.

Syllabus

GREAT-WEST LIFE & ANNUITY INSURANCE CO. ET AL. *v.* KNUDSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 99–1786. Argued October 1, 2001—Decided January 8, 2002

When respondent Janette Knudson was injured in a car accident, the health plan (Plan) of petitioner Earth Systems, Inc., the employer of Janette's then-husband, respondent Eric Knudson, covered $411,157.11 of her medical expenses, most of which was paid by petitioner Great-West Life & Annuity Insurance Co. The Plan's reimbursement provision gives it the right to recover from a beneficiary any payment for benefits paid by the Plan that the beneficiary is entitled to recover from a third party. A separate agreement assigns Great-West the Plan's rights to any reimbursement provision claim. After the Knudsons filed a state-court tort action to recover from the manufacturer of their car and others, they negotiated a settlement which allocated the bulk of the recovery to attorney's fees and to a trust for Janette's medical care, and earmarked $13,828.70 (the portion of the settlement attributable to past medical expenses) to satisfy Great-West's reimbursement claim. Approving the settlement, the state court ordered the defendants to pay the trust amount directly and the remainder to respondents' attorney, who, in turn, would tender checks to Great-West and other creditors. Instead of cashing its check, Great-West filed this federal action under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) to enforce the Plan's reimbursement provision by requiring the Knudsons to pay the Plan $411,157.11 of any proceeds recovered from third parties. The District Court granted the Knudsons summary judgment, holding that the terms of the Plan limited its right of reimbursement to the $13,828.70 determined by the state court. The Ninth Circuit affirmed on different grounds, holding that judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party is not "equitable relief" authorized by § 502(a)(3).

Held: Because petitioners are seeking legal relief—the imposition of personal liability on respondents for a contractual obligation to pay money—§ 502(a)(3) does not authorize this action. Pp. 209–221.

(a) Under § 502(a)(3)—which authorizes a civil action "to enjoin any act or practice which violates . . . the terms of the plan, or . . . to obtain other appropriate equitable relief"—the term "equitable relief" refers to those categories of relief that were typically available in equity.

Syllabus

Mertens v. *Hewitt Associates*, 508 U. S. 248, 256. Here, petitioners seek, in essence, to impose personal contractual liability on respondents—relief that was not typically available in equity, but is the classic form of *legal* relief. *Id.*, at 255. Petitioners' and the Government's efforts to characterize the relief sought as "equitable" are not persuasive. Pp. 209–210.

(b) The Court rejects petitioners' argument that they are entitled to relief under § 502(a)(3)(A) because they seek "to enjoin a[n] act or practice"—respondents' failure to reimburse the Plan—"which violates . . . the [plan's] terms." An injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity. Those rare cases in which an equity court would decree specific performance of a contract to transfer funds were suits that, unlike the present case, sought to prevent future losses that were either incalculable or would be greater than the sum awarded. *Bowen* v. *Massachusetts*, 487 U. S. 879, distinguished. Pp. 210–212.

(c) Also rejected is petitioners' argument that their suit is authorized by § 502(a)(3)(B) because they seek restitution, which they characterize as a form of equitable relief. Restitution is a legal remedy when ordered in a case at law and an equitable remedy when ordered in an equity case, and whether it is legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought. For restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession. Here, the basis for petitioners' claim is not that respondents hold particular funds that, in good conscience, belong to petitioners, but that petitioners are contractually entitled to *some* funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable, but legal. *Mertens*, *supra*, at 256, and *Harris Trust and Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U. S. 238, 253, distinguished. Pp. 212–218.

(d) Finally, the Court rejects the Government's argument that the common law of trusts provides petitioners with equitable remedies that allow them to bring this action under § 502(a)(3). Such trust remedies are simply inapposite, see *Mertens*, *supra*, at 256, and, in any event, do not give a trustee a separate equitable cause of action for payment from moneys other than the beneficiary's interest in the trust. Pp. 219–220.

208 F. 3d 221, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 221. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined, *post*, p. 224.

James F. Jorden argued the cause for petitioners. With him on the briefs were *Waldemar J. Pflepsen, Jr.*, *Stephen H. Goldberg*, *David C. Aspinwall*, *Thomas H. Lawrence*, and *John M. Russell*.

Paul R. Q. Wolfson argued the cause for the United States as *amicus curiae* in support of petitioners. On the brief were *Acting Solicitor General Underwood*, *Deputy Solicitor General Kneedler*, *Beth S. Brinkmann*, *Judith E. Kramer*, *Allen H. Feldman*, *Nathaniel L. Spiller*, and *Gary K. Stearman*.

Richard G. Taranto, by invitation of the Court, 532 U. S. 917, argued the cause as *amicus curiae* urging affirmance. *Jeffrey S. Pop* filed a brief for respondent Janette Knudson.*

JUSTICE SCALIA delivered the opinion of the Court.

The question presented is whether § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 891, 29 U. S. C. § 1132(a)(3) (1994 ed.), authorizes this action by petitioners to enforce a reimbursement provision of an ERISA plan.

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*Briefs of *amici curiae* urging reversal were filed for the American Association of Health Plans et al. by *Stephanie W. Kanwit*, *Louis Saccoccio*, *Robin S. Conrad*, and *Jeffrey Gabardi*; for AARP et al. by *Paula Brantner*, *Mary Ellen Signorille*, and *Melvin Radowitz*; for the Central States, Southeast and Southwest Areas Health and Welfare Fund by *John A. Kukankos*, *James L. Coghlan*, *Francis E. Stepnowski*, *Debra M. Cyranoski*, and *William J. Nellis*; for the National Association of Subrogation Professionals, Inc., by *Mark D. Spencer*; and for the Self-Insurance Institute of America, Inc., by *George J. Pantos*.

Arthur H. Bryant, *F. Paul Bland, Jr.*, and *Leslie Brueckner* filed a brief for the Maryland HMO Subrogation Plaintiffs as *amici curiae*.

I

Respondent Janette Knudson was rendered quadriplegic by a car accident in June 1992. Because her then-husband, respondent Eric Knudson, was employed by petitioner Earth Systems, Inc., Janette was covered by the Health and Welfare Plan for Employees and Dependents of Earth Systems, Inc. (Plan). The Plan covered $411,157.11 of Janette's medical expenses, of which all except $75,000 was paid by petitioner Great-West Life & Annuity Insurance Co. pursuant to a "stop-loss" insurance agreement with the Plan.

The Plan includes a reimbursement provision that is the basis for the present lawsuit. This provides that the Plan shall have "the right to recover from the [beneficiary] any payment for benefits" paid by the Plan that the beneficiary is entitled to recover from a third party. App. 58. Specifically, the Plan has "a first lien upon any recovery, whether by settlement, judgment or otherwise," that the beneficiary receives from the third party, not to exceed "the amount of benefits paid [by the Plan] . . . [or] the amount received by the [beneficiary] for such medical treatment . . . ." *Id.*, at 58–59. If the beneficiary recovers from a third party and fails to reimburse the Plan, "then he will be personally liable to [the Plan] . . . up to the amount of the first lien." *Id.*, at 59. Pursuant to an agreement between the Plan and Great-West, the Plan "assign[ed] to Great-West all of its rights to make, litigate, negotiate, settle, compromise, release or waive" any claim under the reimbursement provision. *Id.*, at 45.

In late 1993, the Knudsons filed a tort action in California state court seeking to recover from Hyundai Motor Company, the manufacturer of the car they were riding in at the time of the accident, and other alleged tortfeasors. The parties to that action negotiated a $650,000 settlement, a notice of which was mailed to Great-West. This allocated $256,745.30 to a Special Needs Trust under Cal. Prob. Code Ann. §3611 (West 1991 and Supp. 1993) to provide for

Janette's medical care; $373,426 to attorney's fees and costs; $5,000 to reimburse the California Medicaid program (Medi-Cal); and $13,828.70 (the portion of the settlement attributable to past medical expenses) to satisfy Great-West's claim under the reimbursement provision of the Plan.

The day before the hearing scheduled for judicial approval of the settlement, Great-West, calling itself a defendant and asserting that the state-court action involved federal claims related to ERISA, filed in the United States District Court for the Central District of California a notice of removal pursuant to 28 U. S. C. § 1441 (1994 ed.). That court concluded that Great-West was not a defendant and could not remove the case, and therefore remanded to the state court, which approved the settlement. The state court's order provided that the defendants would pay the settlement amount allocated to the Special Needs Trust directly to the trust, and the remaining amounts to respondents' attorney, who, in turn, would tender checks to Medi-Cal and Great-West.

Great-West, however, never cashed the check it received from respondents' attorney. Instead, at the same time that Great-West sought to remove the state-law tort action, it filed this action in the same federal court (the United States District Court for the Central District of California), seeking injunctive and declaratory relief under § 502(a)(3) to enforce the reimbursement provision of the Plan by requiring the Knudsons to pay the Plan $411,157.11 of any proceeds recovered from third parties. Great-West subsequently filed an amended complaint adding Earth Systems and the Plan as plaintiffs and seeking a temporary restraining order against continuation of the state-court proceedings for approval of the settlement. The District Court denied the temporary restraining order, a ruling that petitioners did not appeal. After the state court approved the settlement and the money was disbursed, the District Court granted summary judgment to the Knudsons. It held that the language of the Plan limited its right of reimbursement to the amount received by

respondents from third parties *for past medical treatment*, an amount that the state court determined was $13,828.70. The United States Court of Appeals for the Ninth Circuit affirmed on different grounds. Judgt. order reported at 208 F. 3d 221 (2000). Citing *FMC Medical Plan* v. *Owens*, 122 F. 3d 1258 (CA9 1997), it held that judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party is not equitable relief and is therefore not authorized by § 502(a)(3). We granted certiorari. 531 U. S. 1124 (2001).

II

We have observed repeatedly that ERISA is a "'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefit system." *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 251 (1993) (quoting *Nachman Corp.* v. *Pension Benefit Guaranty Corporation*, 446 U. S. 359, 361 (1980)). We have therefore been especially "reluctant to tamper with [the] enforcement scheme" embodied in the statute by extending remedies not specifically authorized by its text. *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, 147 (1985). Indeed, we have noted that ERISA's "carefully crafted and detailed enforcement scheme provides 'strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.'" *Mertens*, *supra*, at 254 (quoting *Russell*, *supra*, at 146–147).

Section 502(a)(3) authorizes a civil action:

> "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates . . . the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of . . . the terms of the plan." 29 U. S. C. § 1132(a)(3) (1994 ed.).

As we explained in *Mertens*, "'[e]quitable' relief must mean *something* less than *all* relief." 508 U. S., at 258, n. 8.

Thus, in *Mertens* we rejected a reading of the statute that would extend the relief obtainable under § 502(a)(3) to whatever relief a court of equity is empowered to provide in the particular case at issue (which could include legal remedies that would otherwise be beyond the scope of the equity court's authority). Such a reading, we said, would "limit the relief *not at all*" and "render the modifier ['equitable'] superfluous." *Id.*, at 257–258. Instead, we held that the term "equitable relief" in § 502(a)(3) must refer to "those categories of relief that were *typically* available in equity . . . ." *Id.*, at 256.

Here, petitioners seek, in essence, to impose personal liability on respondents for a contractual obligation to pay money—relief that was not typically available in equity. "A claim for money due and owing under a contract is 'quintessentially an action at law.'" *Wal-Mart Stores, Inc.* v. *Wells*, 213 F. 3d 398, 401 (CA7 2000) (Posner, J.). "Almost invariably . . . suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty." *Bowen* v. *Massachusetts*, 487 U. S. 879, 918–919 (1988) (SCALIA, J., dissenting). And "[m]oney damages are, of course, the classic form of *legal* relief." *Mertens*, *supra*, at 255.

Nevertheless, petitioners, along with their *amicus* the United States, struggle to characterize the relief sought as "equitable" under the standard set by *Mertens*. We are not persuaded.

A

First, petitioners argue that they are entitled to relief under § 502(a)(3)(A) because they seek "to enjoin a[n] act or practice"—respondents' failure to reimburse the Plan—"which violates . . . the terms of the plan." But an injunction to compel the payment of money past due under a con-

tract, or specific performance of a past due monetary obligation, was not typically available in equity.[1] See, *e. g.*, 3 Restatement (Second) of Contracts § 359 (1979); 3 Dobbs § 12.8(2), at 199; 5A A. Corbin, Contracts § 1142, p. 119 (1964) (hereinafter Corbin). Those rare cases in which a court of equity would decree specific performance of a contract to transfer funds were suits that, unlike the present case, sought to prevent future losses that either were incalculable or would be greater than the sum awarded. For example, specific performance might be available to enforce an agreement to lend money "when the unavailability of alternative financing would leave the plaintiff with injuries that are difficult to value; or to enforce an obligor's duty to make future monthly payments, after the obligor had consistently refused to make past payments concededly due, and thus threatened the obligee with the burden of bringing multiple damages actions." *Bowen*, *supra*, at 918 (SCALIA, J., dissenting). See also 3 Dobbs § 12.8(2), at 200; 5A Corbin § 1142, at 117–118. Typically, however, specific performance of a contract to pay money was not available in equity.

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[1] At oral argument, petitioners' counsel argued that the injunction specifically authorized by § 502(a)(3)(A) need not be a form of equitable relief. Petitioners' brief, however, conceded that the reference in § 502(a)(3)(B) to "*other* appropriate equitable relief" suggests that the relief authorized in § 502(a)(3)(A) "to enjoin any act or practice which violates . . . the terms of [a] plan" is, itself, "appropriate *equitable* relief." See Brief for Petitioners 15, n. 6 (emphasis added). In any event, injunction is inherently an equitable remedy, see, *e. g.*, *Reich* v. *Continental Casualty Co.*, 33 F. 3d 754, 756 (CA7 1994); 1 D. Dobbs, Law of Remedies § 1.2, p. 11 (2d ed. 1993) (hereinafter Dobbs), and statutory reference to that remedy must, absent other indication, be deemed to contain the limitations upon its availability that equity typically imposes. Without this rule of construction, a statutory limitation to injunctive relief would be meaningless, since any claim for legal relief can, with lawyerly inventiveness, be phrased in terms of an injunction. Here, of course, there is not only no contrary indication, but the positive indication in paragraph (B) that the injunction referred to in paragraph (A) is an equitable injunction.

Bowen v. *Massachusetts*, *supra*, upon which petitioners rely, is not to the contrary. We held in *Bowen* that the provision of the Administrative Procedure Act that precludes actions seeking "money damages" against federal agencies, 5 U. S. C. § 702, does not bar a State from seeking specific relief to obtain money to which it claims entitlement under the federal Medicaid statute, 42 U. S. C. § 1396b(d) (1994 ed. and Supp. V). *Bowen* "did not turn on distinctions between 'equitable' actions and other actions . . . but rather [on] what Congress meant by 'other than money damages' " in the Administrative Procedure Act. *Department of Army* v. *Blue Fox, Inc.*, 525 U. S. 255, 261 (1999). Furthermore, *Bowen*, unlike petitioners' claim, did not deal with specific performance of a *contractual* obligation to pay *past* due sums. Rather, Massachusetts claimed not only that the Federal Government failed to reimburse it for past expenses pursuant to a statutory obligation, but that the method the Federal Government used to calculate reimbursements would lead to underpayments in the future. Thus, the suit was not merely for past due sums, but for an injunction to correct the method of calculating payments going forward. *Bowen*, *supra*, at 889. *Bowen* has no bearing on the unavailability of an injunction to enforce a contractual obligation to pay money past due.

B

Second, petitioners argue that their suit is authorized by § 502(a)(3)(B) because they seek restitution, which they characterize as a form of equitable relief. However, not all relief falling under the rubric of restitution is available in equity. In the days of the divided bench, restitution was available in certain cases at law, and in certain others in equity. See, *e. g.*, 1 Dobbs § 1.2, at 11; *id.*, § 4.1(1), at 556; *id.*, § 4.1(3), at 564–565; *id.*, §§ 4.2–4.3, at 570–624; 5 Corbin § 1102, at 550; Muir, ERISA Remedies: Chimera or Congressional Compromise?, 81 Iowa L. Rev. 1, 36–37 (1995); Redish, Seventh Amendment Right to Jury Trial: A Study in the Irrationality

of Rational Decision Making, 70 Nw. U. L. Rev. 486, 528 (1975). Thus, "restitution is a legal remedy when ordered in a case at law and an equitable remedy . . . when ordered in an equity case," and whether it is legal or equitable depends on "the basis for [the plaintiff's] claim" and the nature of the underlying remedies sought. *Reich* v. *Continental Casualty Co.*, 33 F. 3d 754, 756 (CA7 1994) (Posner, J.).

In cases in which the plaintiff "could *not* assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him," the plaintiff had a right to restitution *at law* through an action derived from the common-law writ of assumpsit. 1 Dobbs § 4.2(1), at 571. See also Muir, *supra*, at 37. In such cases, the plaintiff's claim was considered legal because he sought "to obtain a judgment imposing a merely personal liability upon the defendant to pay a sum of money." Restatement of Restitution § 160, Comment *a*, pp. 641–642 (1936). Such claims were viewed essentially as actions at law for breach of contract (whether the contract was actual or implied).

In contrast, a plaintiff could seek restitution *in equity*, ordinarily in the form of a constructive trust or an equitable lien, where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession. See 1 Dobbs § 4.3(1), at 587–588; Restatement of Restitution, *supra*, § 160, Comment *a*, at 641–642; 1 G. Palmer, Law of Restitution § 1.4, p. 17; § 3.7, p. 262 (1978). A court of equity could then order a defendant to transfer title (in the case of the constructive trust) or to give a security interest (in the case of the equitable lien) to a plaintiff who was, in the eyes of equity, the true owner. But where "the property [sought to be recovered] or its proceeds have been dissipated so that no product remains, [the plaintiff's] claim is only that of a general creditor," and the plaintiff "cannot enforce a con-

structive trust of or an equitable lien upon other property of the [defendant]." Restatement of Restitution, *supra*, § 215, Comment *a*, at 867. Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession.[2]

Here, the funds to which petitioners claim an entitlement under the Plan's reimbursement provision—the proceeds from the settlement of respondents' tort action—are not in respondents' possession. As the order of the state court approving the settlement makes clear, the disbursements from the settlement were paid by two checks, one made payable to the Special Needs Trust and the other to respondents' attorney (who, after deducting his own fees and costs, placed the remaining funds in a client trust account from which he tendered checks to respondents' other creditors, Great-West and Medi-Cal). The basis for petitioners' claim is not that respondents hold particular funds that, in good conscience, belong to petitioners, but that petitioners are contractually entitled to *some* funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable—the imposition of a constructive trust or equitable lien on particular property—but legal—the imposition of personal liability for the benefits that they conferred upon respondents.

Admittedly, our cases have not previously drawn this fine distinction between restitution at law and restitution in equity, but neither have they involved an issue to which the

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[2] There is a limited exception for an accounting for profits, a form of equitable restitution that is not at issue in this case. If, for example, a plaintiff is entitled to a constructive trust on particular property held by the defendant, he may also recover profits produced by the defendant's use of that property, even if he cannot identify a particular res containing the profits sought to be recovered. See 1 Dobbs § 4.3(1), at 588; *id.*, § 4.3(5), at 608. Petitioners do not claim the profits (if any) produced by the proceeds from the state-court settlement, and are not entitled to the constructive trust in those proceeds that would support such a claim.

distinction was relevant. In *Mertens*, we mentioned in dicta that "injunction, mandamus, and *restitution*" are categories of relief that were typically available in equity. 508 U. S., at 256 (emphasis added). *Mertens*, however, did not involve a claim for restitution at all; rather, we addressed the question whether a nonfiduciary who knowingly participates in the breach of a fiduciary duty imposed by ERISA is liable to the plan for compensatory damages. *Id.*, at 249–250. Thus, as courts and commentators have noted, "all the [Supreme] Court meant [in *Mertens* and other cases] was that restitution, in contrast to damages, is a remedy commonly ordered in equity cases and therefore an equitable remedy in a sense in which damages, though *occasionally* awarded in equity cases, are not." *Reich* v. *Continental Casualty Co.*, 33 F. 3d, at 756. *Mertens* did not purport to change the well-settled principle that restitution is "not an *exclusively* equitable remedy," and whether it is legal or equitable in a particular case (and hence whether it is authorized by § 502(a)(3)) remains dependent on the nature of the relief sought. 33 F. 3d, at 756. See also Muir, 81 Iowa L. Rev., at 36 (analyzing *Mertens* and explaining that "only equitable restitution will be available under Section 502(a)(3)").

Likewise, in *Harris Trust and Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U. S. 238 (2000), we noted that "an action for restitution against a transferee of tainted plan assets" is "appropriate equitable relief" within the meaning of § 502(a)(3). *Id.*, at 253. While we did not expressly distinguish between legal and equitable restitution, the nature of the relief we described in *Harris Trust*—a claim to specific property (or its proceeds) held by the defendant—accords with the restitution we describe as equitable today. *Id.*, at 250 ("The trustee or beneficiaries may then maintain an action for restitution *of the property* (if not already disposed of) or disgorgement *of proceeds* (if already disposed of) . . ." (emphasis added)); *id.*, at 250–251 ("Whenever the *legal title to property* is obtained through means or under

circumstances 'which render it unconscientious *for the holder of the legal title to retain and enjoy the beneficial interest,* equity impresses a constructive trust *on the property thus acquired* in favor of the one who is truly and equitably entitled to the same . . .' (emphasis added) (internal quotation marks and citations omitted)).

JUSTICE GINSBURG's dissent finds it dispositive that *some* restitutionary remedies were typically available in equity. In her view, the touchstone for distinguishing legal from equitable relief is the "substance of the relief requested," *post,* at 228—and since the "substantive" relief of restitution is typically available in equity, it is, she concludes, available under § 502(a)(3). It is doubtful, to begin with, that "restitution"—or at least restitution defined broadly enough to embrace those forms of restitution available at law—pertains to the *substance* of the relief rather than to the legal theory under which it is awarded. The "substance" of a money judgment is a compelled transfer of money; a money judgment *for restitution* could be thought to identify a particular *type* of relief (rather than merely the theory on which relief is awarded) only if one were to limit restitution to the return of identifiable funds (or property) belonging to the plaintiff and held by the defendant—that is, to limit restitution to the form of restitution traditionally available in equity.

In any event, JUSTICE GINSBURG's approach, which looks only to the nature of the relief and not to the conditions that equity attached to its provision, logically leads to the same untenable conclusion reached by JUSTICE STEVENS's dissent—which is that § 502(a)(3)(A)'s explicit authorization of injunction, which it identifies as a form of equitable relief, permits (what equity would never permit) an injunction against failure to pay a simple indebtedness—or, for that matter, an injunction against failure to pay punitive damages. The problem with that conclusion, of course, is that it renders the statute's limitation of relief to "[injunction] . . . or other appropriate equitable relief" utterly pointless. It

is easy to disparage the law-equity dichotomy as "an ancient classification," *post*, at 224 (opinion of GINSBURG, J.), and an "obsolete distinctio[n]," *post*, at 222 (opinion of STEVENS, J.). Like it or not, however, that classification and distinction has been specified by the statute; and there is no way to give the specification meaning—indeed, there is no way to render the unmistakable limitation of the statute a limitation *at all*—except by adverting to the differences between law and equity to which the statute refers. The dissents greatly exaggerate, moreover, the difficulty of that task. Congress felt comfortable referring to equitable relief in this statute—as it has in many others[3]—precisely because the basic contours of the term are well known. Rarely will there be need for any more "antiquarian inquiry," *post*, at 233–234 (opinion of GINSBURG, J.), than consulting, as we have done, standard current works such as Dobbs, Palmer, Corbin, and the Restatements, which make the answer clear. It is an inquiry, moreover, that we are accustomed to pursuing, and will always have to pursue, in other contexts. See, *e. g.*, *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 318 (1999) (powers of federal courts under the Judiciary Act's grant of jurisdiction over "all . . . suits in equity"); *Curtis* v. *Loether*, 415 U. S. 189, 192 (1974) (scope of the Seventh Amendment right to jury trial "[i]n suits at common law"). What *will* introduce a high degree of confusion into congressional use (and lawyers' understanding) of the statutory term "equity" is the rolling revision of its content contemplated by the dissents.

JUSTICE STEVENS finds it "difficult . . . to understand why Congress would not have wanted to provide recourse in federal court for the plan violation disclosed by the record in this case," *post*, at 223. It is, however, not our job to find reasons for what Congress has plainly done; and it *is* our job to avoid rendering what Congress has plainly done (here,

[3] A Westlaw search discloses that the term "equitable relief" appears in 77 provisions of the United States Code.

limit the available relief) devoid of reason and effect. If, as JUSTICE GINSBURG surmises, *post*, at 234, Congress meant to rule out nothing more than "compensatory and punitive damages," it could simply have said that. That Congress sought to achieve this result by subtle reliance upon the dissenters' novel and expansive view of equity is most implausible.

Respecting Congress's choice to limit the relief available under § 502(a)(3) to "equitable relief" requires us to recognize the difference between legal and equitable forms of restitution.[4] Because petitioners seek only the former, their suit is not authorized by § 502(a)(3).

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[4] In support of its argument that Congress intended all restitution to be "equitable relief" under § 502(a)(3), JUSTICE GINSBURG's dissent asserts that Congress has treated backpay, "a type of restitution," *post*, at 230, as equitable for purposes of Title VII of the Civil Rights Act of 1964. The authorities of this Court cited for the proposition that backpay is a type of restitution are *Curtis* v. *Loether*, 415 U. S. 189, 197 (1974), and *Teamsters* v. *Terry*, 494 U. S. 558, 572 (1990). It is notable, however, that these cases do *not* say that *since* it is restitutionary, it is *therefore* equitable. *Curtis*, in fact, explicitly refuses to do so. 415 U. S., at 197 ("Whatever may be the merit of the 'equitable' characterization [of backpay] in Title VII cases . . ." (footnote omitted)). And in *Terry*, while we noted that "we have characterized damages as equitable where they are restitutionary," 494 U. S., at 570, we did not (and could not) say that *all* forms of restitution are equitable.

Congress "treated [backpay] as equitable" in Title VII, *post*, at 230 (opinion of GINSBURG, J.), only in the narrow sense that it allowed backpay to be awarded *together with* equitable relief:

"[T]he court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, *reinstatement or hiring of employees, with or without back pay* . . . , or any other equitable relief as the court deems appropriate." 42 U. S. C. § 2000e–5(g)(1) (1994 ed.) (emphasis added).

If the referent of "other equitable relief" were "back pay," it could be said, in a sense relevant here, that Congress "treated" backpay as equitable relief. In fact, however, the referent is "reinstatement or hiring of employees," which is modified by the phrase "with or without back pay." *Curtis* recognized that courts of appeals had treated Title VII backpay as

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Third, the United States, as petitioners' *amicus*, argues that the common law of trusts provides petitioners with equitable remedies that allow them to bring this action under § 502(a)(3). Analogizing respondents to beneficiaries of a trust, the United States argues that a trustee could bring a suit to enforce an agreement by a beneficiary to pay money into a trust or to repay an advance made from the trust. See Brief for United States as *Amicus Curiae* 17–19 (citing Restatement (Second) of Trusts §§ 252, 255 (1959) (hereinafter Restatement of Trusts)). These trust remedies are simply inapposite. In *Mertens*, we rejected the claim that the special equity-court powers applicable to trusts define the reach of § 502(a)(3). Instead, we held that the term "equitable relief" in § 502(a)(3) must refer to "those categories of relief that were *typically* available in equity . . . ." 508 U. S., at 256. In any event, the cited sections of the Restatement, by their terms, merely allow a trustee to charge the beneficiary's interest in the trust in order to capture money owed. See Restatement of Trusts § 252 ("If one of the bene-

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equitable because § 2000e–5(g)(1) had made backpay "an integral part of an equitable remedy," 415 U. S., at 197. See *Grayson* v. *Wickes Corp.*, 607 F. 2d 1194, 1196 (CA7 1979) (Title VII backpay is "an integral part of the equitable remedy of reinstatement"); *Harmon* v. *May Broadcasting Co.*, 583 F. 2d 410, 411 (CA8 1978) (same); *Slack* v. *Havens*, 522 F. 2d 1091, 1094 (CA9 1975) (same); *Johnson* v. *Georgia Highway Express, Inc.*, 417 F. 2d 1122, 1125 (CA5 1969) (same).

The statement in *Terry* on which JUSTICE GINSBURG relies—that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief,'" 494 U. S., at 572—is plainly inaccurate unless it is understood to mean that Title VII backpay was "specifically" made part of an equitable remedy. That is the only sense which the *Terry* discussion requires, and is reinforced by the immediately following citation of the portion of *Curtis* that called Title VII backpay "an integral part of an equitable remedy," *Curtis*, *supra*, at 197. See *Terry*, *supra*, at 572. The restitution sought here by Great-West is not that, but a freestanding claim for money damages. Title VII has nothing to do with this case.

ficiaries of a trust contracts to pay money to the trustee to be held as part of the trust estate and he fails to make the payment, his beneficial interest is subject to a charge for the amount of his liability"); *id.*, § 255 ("If the trustee makes an advance or loan of trust money to a beneficiary, the beneficiary's interest is subject to a charge for the repayment of the amount advanced or lent"). These setoff remedies do not give the trustee a separate equitable cause of action for payment from other moneys.

III

In the end, petitioners ask us to interpret § 502(a)(3) so as to prevent them "from being deprived of any remedy under circumstances where such a result clearly would be inconsistent with a primary purpose of ERISA," namely, the enforcement of the terms of a plan. See Brief for Petitioners 30–31. We note, though it is not necessary to our decision, that there may have been other means for petitioners to obtain the essentially legal relief that they seek. We express no opinion as to whether petitioners could have intervened in the state-court tort action brought by respondents or whether a direct action by petitioners against respondents asserting state-law claims such as breach of contract would have been pre-empted by ERISA. Nor do we decide whether petitioners could have obtained equitable relief against respondents' attorney and the trustee of the Special Needs Trust, since petitioners did not appeal the District Court's denial of their motion to amend their complaint to add these individuals as codefendants.

We need not decide these issues because, as we explained in *Mertens*, "[e]ven assuming . . . that petitioners are correct about the pre-emption of previously available state-court actions" or the lack of other means to obtain relief, "vague notions of a statute's 'basic purpose' are nonetheless inadequate to overcome the words of its text regarding the *specific* issue under consideration." 508 U. S., at 261. In the

very same section of ERISA as § 502(a)(3), Congress authorized "a participant or beneficiary" to bring a civil action "to enforce his rights under the terms of the plan," without reference to whether the relief sought is legal or equitable. 29 U. S. C. § 1132(a)(1)(B) (1994 ed.). But Congress did not extend the same authorization to fiduciaries. Rather, § 502(a)(3), by its terms, only allows for *equitable* relief. We will not attempt to adjust the "carefully crafted and detailed enforcement scheme" embodied in the text that Congress has adopted.[5] *Mertens, supra,* at 254. Because petitioners are seeking legal relief—the imposition of personal liability on respondents for a contractual obligation to pay money—§ 502(a)(3) does not authorize this action. Accordingly, we affirm the judgment of the Court of Appeals.

It is so ordered.

JUSTICE STEVENS, dissenting.

In her lucid dissent, which I join, JUSTICE GINSBURG has explained why it is fanciful to assume that in 1974 Congress

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[5] *Varity Corp.* v. *Howe*, 516 U. S. 489 (1996), upon which petitioners rely, is not to the contrary. In *Varity Corp.*, we explained that § 502(a)(3) is a "'catchall' provisio[n]" that "act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." *Id.*, at 512. Thus, we concluded that § 502(a)(3) authorizes lawsuits by beneficiaries for individualized equitable relief for breach of fiduciary obligations, notwithstanding the petitioner's argument that such relief is not "appropriate" because §§ 502(a)(2) and 409 of ERISA specifically address liability for breach of fiduciary duty and preclude individualized relief. *Id.*, at 507–515. In *Varity Corp.*, however, it was undisputed that respondents were seeking *equitable* relief, and the question was whether such relief was "appropriate" in light of the apparent lack of alternative remedies. *Id.*, at 508. *Varity Corp.* did not hold, as petitioners urge us to conclude today, that § 502(a)(3) is a catchall provision that authorizes *all* relief that is consistent with ERISA's purposes and is not explicitly provided elsewhere. To accept petitioners' argument is to ignore the plain language of the statute, which provides fiduciaries with only equitable relief.

intended to revive the obsolete distinctions between law and equity as a basis for defining the remedies available in federal court for violations of the terms of a plan under the Employee Retirement Income Security Act of 1974 (ERISA). She has also convincingly argued that the relief sought in the present case is permissible even under the Court's favored test for determining what qualifies as "equitable relief" under § 502(a)(3)(B) of ERISA. I add this postscript because I am persuaded that Congress intended the word "enjoin," as used in § 502(a)(3)(A), to authorize any appropriate order that prohibits or terminates a violation of an ERISA plan, regardless of whether a precedent for such an order can be found in English Chancery cases.

I read the word "other" in § 502(a)(3)(B) as having been intended to enlarge, not contract, a federal judge's remedial authority. Consequently, and contrary to the Court's view in *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 256 (1993), I would neither read § 502(a)(3)(B) as placing a *limitation* on a judge's authority under § 502(a)(3)(A), nor shackle an analysis of what constitutes "equitable relief" under § 502(a)(3)(B) to the sort of historical analysis that the Court has chosen.

Nevertheless, *Mertens* is the law, and an inquiry under § 502(a)(3)(B) now entails an analysis of what relief would have been "*typically* available in equity." 508 U. S., at 256. This does not mean, however, that all inquiries under § 502(a)(3) must involve historical analysis, as the Court seems to believe, *e. g.*, *ante*, at 209–210. In *Mertens*, our task was to interpret "other appropriate equitable relief" under § 502(a)(3)(B), and our holding thus did not extend to the meaning of "to enjoin" in § 502(a)(3)(A). As a result, an analysis of tradition is unnecessary with respect to § 502(a)(3)(A). Moreover, that section provides a proper basis for federal jurisdiction in the present case, as petitioners brought suit "to enjoin any act or practice which violates . . . the terms of [a] plan." § 502(a)(3)(A).

Not only is an inclusive reading of § 502(a)(3) consonant with the text of the statute, but it accomplishes Congress' goal of providing a federal remedy for violations of the terms of plans governed by ERISA. Contrary to the Court's current reluctance to conclude that wrongs should be remedied,[1] I believe that the historic presumption favoring the provision of remedies for violations of federal rights[2] should inform our construction of the remedial provisions of federal statutes. It is difficult for me to understand why Congress would not have wanted to provide recourse in federal court for the plan violation disclosed by the record in this case. Cf., *e. g.*, *Varity Corp.* v. *Howe*, 516 U. S. 489, 512–513, 515 (1996) ("We are not aware of any ERISA-related purpose that denial of a remedy would serve"). It is thus unsurprising that the Court's opinion contains no discussion of why Congress would have intended its reading of § 502(a)(3) and the resulting denial of a federal remedy in this case. Absent such discussion, the Court's opinion is remarkably unpersuasive.[3]

I respectfully dissent.

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[1] See, *e. g.*, *Correctional Services Corp.* v. *Malesko*, *ante*, p. 75 (STEVENS, J., dissenting); *Alexander* v. *Sandoval*, 532 U. S. 275, 294–297 (2001) (STEVENS, J., dissenting).

[2] See, *e. g.*, *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 392 (1971) ("'[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief'" (quoting *Bell* v. *Hood*, 327 U. S. 678, 684 (1946))); 403 U. S., at 397 ("'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury'" (quoting *Marbury* v. *Madison*, 1 Cranch 137, 163 (1803))).

[3] In a response to this dissent that echoes Tennyson's poem about the Light Brigade—"Theirs not to reason why, Theirs but to do and die"—the Court states that it is "not our job to find reasons for what Congress has plainly done," *ante*, at 217. Congress, of course, has the power to enact unreasonable laws. Nevertheless, instead of blind obedience to what at first blush appears to be such a law, I think it both prudent and respectful to pause to ask why Congress would do so.

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Today's holding, the majority declares, is compelled by "Congress's choice to limit the relief available under § 502(a)(3)." *Ante*, at 218. In the Court's view, Congress' placement of the word "equitable" in that provision signaled an intent to exhume the "fine distinction[s]" borne of the "days of the divided bench," *ante*, at 212, 214; to treat as dispositive an ancient classification unrelated to the substance of the relief sought; and to obstruct the general goals of ERISA by relegating to state court (or to no court at all) an array of suits involving the interpretation of employee health plan provisions. Because it is plain that Congress made no such "choice," I dissent.

I

The Court purports to resolve this case by determining the "nature of the relief" Great-West seeks. *Ante*, at 215. The opinion's analysis, however, trains on the question, deemed subsidiary, whether the disputed claim could have been brought in an equity court "[i]n the days of the divided bench." *Ante*, at 212–216 (inquiring whether the claim is akin to "an action derived from the common-law writ of assumpsit" that would have been brought at law, or instead resembles a claim for return of particular assets that would "lie in equity"). To answer that question, the Court scrutinizes the form of the claim and contrasts its features with the technical requirements that once governed the jurisdictional divide between the premerger courts. Finding no clear match on the equitable side of the line, the Court concludes that Great-West's claim is beyond the scope of § 502(a)(3) and therefore outside federal jurisdiction.

The rarified rules underlying this rigid and time-bound conception of the term "equity" were hardly at the fingertips of those who enacted § 502(a)(3). By 1974, when ERISA became law, the "days of the divided bench" were a fading memory, for that era had ended nearly 40 years earlier with

the advent of the Federal Rules of Civil Procedure. Those rules instruct: "There shall be one form of action" cognizable in the federal courts. Fed. Rule Civ. Proc. 2. Except where reference to historical practice might be necessary to preserve a right established before the merger, see, *e. g.*, *Curtis* v. *Loether*, 415 U. S. 189, 195 (1974) (Seventh Amendment jury trial), the doctrinal rules delineating the boundaries of the divided courts had receded. See 4 C. Wright & A. Miller, Federal Practice and Procedure § 1041, p. 135 (1987); C. Wright, Handbook on Law of Federal Courts § 67, p. 282 (2d ed. 1970) ("[I]nstances in which the old distinctions continue to rule from their graves are quite rare.").

It is thus fanciful to attribute to Members of the 93d Congress familiarity with those "needless and obsolete distinctions," 4 Wright & Miller, *supra*, § 1041, at 131, much less a deliberate "choice" to resurrect and import them wholesale into the modern regulatory scheme laid out in ERISA. "[T]here is nothing to suggest that ERISA's drafters wanted to embed their work in a time warp." *Health Cost Controls of Ill.* v. *Washington*, 187 F. 3d 703, 711 (CA7 1999) (Posner, J.); cf. *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 257, n. 7 (1993) (meaning of "equitable relief" in § 502(a)(3) must be determined based on "the state of the law when ERISA was enacted").

That Congress did not intend to strap § 502(a)(3) with the anachronistic rules on which the majority relies is corroborated by the anomalous results to which the supposed legislative "choice" leads. Although the Court recognizes that it need not decide the issue, see *ante*, at 220, its opinion surely contemplates that a constructive trust claim would lie; hence, the outcome of this case would be different if Great-West had sued the trustee of the Special Needs Trust, who has "possession" of the requested funds, instead of the Knudsons, who do not. See *ante*, at 214 (constructive trust unavailable because "the funds to which petitioners claim an entitlement . . . are not in respondents' possession"). Under

that view, whether relief is "equitable" would turn entirely on the designation of the defendant, even though the substance of the relief Great-West could have obtained in a suit against the trustee—a judgment ordering the return of wrongfully withheld funds—is identical to the relief Great-West in fact sought from the Knudsons. Unlike today's majority, I resist this "rule unjustified in reason, which produces different results for breaches of duty in situations that cannot be differentiated in policy." *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375, 405 (1970).

The procedural history of this case highlights the anomaly of upholding a judgment neither party supports,[1] one that will at least protract and perhaps preclude judicial resolution of the nub of the controversy—*i. e.*, what recoupment does the Plan's reimbursement provision call for. Great-West named the Knudsons as defendants before Janet Knudson's Special Needs Trust had been approved. There was no other defendant then in the picture. Seeking at that time to preserve the status quo, Great-West requested from the District Court preliminary injunctive relief to stop the Knudsons from disposing of the funds Hyundai paid to settle the state-court action. Only after the District Court denied that relief did the state court approve of, and order that the settlement funds be paid into, the Special Needs Trust. Great-West then moved for leave to amend its complaint to add the trustee as a defendant, but the District Court denied

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[1] In the District Court, both parties sought decision on the amount Great-West was entitled to recoup under the Plan's provision for recovery of benefits paid, and the court resolved that issue in the Knudsons' favor. The Ninth Circuit, however, refused to review the District Court's resolution of that question, holding instead that federal courts are without authority to grant any relief to parties in Great-West's situation. Because neither party defended that ruling in this Court, Motion to Dismiss as Improvidently Granted 1, we appointed an *amicus curiae* to argue in support of the Ninth Circuit's judgment. See 532 U. S. 917 (2001). Both on brief and at oral argument, appointed counsel commendably developed the position the majority now adopts.

that motion without consideration in light of its judgment for the Knudsons on the merits. Had the District Court ruled differently on this peripheral issue, the majority would presumably reverse rather than affirm a disposition of this case that left in limbo the meaning of the Plan's reimbursement provision. If that is so, then the Court's decision rests on Great-West's failure to appeal an interlocutory issue made moot by the District Court's final judgment, an issue that, to all involved, must have seemed utterly inconsequential post judgment day.

The majority's avowed obedience to Congress' "choice" is further belied by the conflict between the Court's holding and Congress' stated goals in enacting ERISA. After today, ERISA plans and fiduciaries unable to fit their suits within the confines the Court's opinion constructs are barred from a federal forum; they may seek enforcement of reimbursement provisions like the one here at issue only in state court. Many such suits may be precluded by antisubrogation laws, see Brief for Maryland HMO Subrogation Plaintiffs as *Amici Curiae* 4–5, n. 2, others may be preempted by ERISA itself, and those that survive may produce diverse and potentially contradictory interpretations of the disputed plan terms.

We have recognized that Congress sought through ERISA "to establish a uniform administrative scheme" and to ensure that plan provisions would be enforced in federal court, free of "the threat of conflicting or inconsistent State and local regulation." *Fort Halifax Packing Co.* v. *Coyne*, 482 U. S. 1, 9 (1987) (internal quotation marks omitted) (quoting 120 Cong. Rec. 29933 (1974)). The majority's construction frustrates those goals by ascribing to Congress the paradoxical intent to enact a specific provision, § 502(a)(3), that thwarts the purposes of the general scheme of which it is part. The Court is no doubt correct that "vague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text regarding the specific issue under consideration."

Ante, at 220 (quoting *Mertens*, 508 U. S., at 261) (emphasis deleted). But when Congress' clearly stated purpose so starkly conflicts with questionable inferences drawn from a single word in the statute, it is the latter, and not the former, that must give way.

It is particularly ironic that the majority acts in the name of equity as it sacrifices congressional intent and statutory purpose to archaic and unyielding doctrine. "Equity eschews mechanical rules; it depends on flexibility." *Holmberg* v. *Armbrecht*, 327 U. S. 392, 396 (1946). And "[a]s this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature.'" *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288, 291–292 (1960) (quoting *Clark* v. *Smith*, 13 Pet. 195, 203 (1839)); see *Albemarle Paper Co.* v. *Moody*, 422 U. S. 405, 417 (1975) ("[W]hen Congress invokes the Chancellor's conscience to further transcendent legislative purposes, what is required is the principled application of standards consistent with those purposes."); cf. *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.*, 527 U. S. 308, 336 (1999) (GINSBURG, J., dissenting) (Court similarly "relie[d] on an unjustifiably static conception of equity jurisdiction").

II

Unprepared to agree that Congress chose to infuse § 502(a)(3) with the recondite distinctions on which the majority relies, I would accord a different meaning to the term "equitable." Consistent with what Congress likely intended and with our decision in *Mertens*, I would look to the substance of the relief requested and ask whether relief of that character was "*typically* available in equity." *Mertens*, 508 U. S., at 256. Great-West seeks restitution, a category of relief fully meeting that measure even if the remedy was also available in cases brought at law. Accordingly, I would not oust this case from the federal courts.

That Great-West requests restitution is beyond dispute. The relief would operate to transfer from the Knudsons funds over which Great-West claims to be the rightful owner. See *Curtis*, 415 U. S., at 197 (describing an award as restitutionary if it would "requir[e] the defendant to disgorge funds wrongfully withheld from the plaintiff"); *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 402 (1946) (restitution encompasses a decree "ordering the return of that which rightfully belongs to" the plaintiff). Great-West alleges that the Knudsons would be unjustly enriched if permitted to retain the funds. See 1 D. Dobbs, Law of Remedies § 4.1(2), p. 557 (2d ed. 1993) ("The fundamental substantive basis for restitution is that the defendant has been unjustly enriched by receiving something, tangible or intangible, that properly belongs to the plaintiff."). And Great-West sued to recover an amount representing the Knudsons' unjust gain, rather than Great-West's loss. See 3 *id.*, § 12.1(1), at 9 ("Restitutionary recoveries are based on the defendant's gain, not on the plaintiff's loss.").

As the majority appears to admit, see *ante*, at 214, our cases have invariably described restitutionary relief as "equitable" without even mentioning, much less dwelling upon, the ancient classifications on which today's holding rests. See, *e. g.*, *Tull* v. *United States*, 481 U. S. 412, 424 (1987) (restitution "traditionally considered an equitable remedy"); *Mertens*, 508 U. S., at 255 (restitution is a "remedy traditionally viewed as 'equitable' "); *Teamsters* v. *Terry*, 494 U. S. 558, 570 (1990) ("[W]e have characterized [money] damages as equitable where they are restitutionary."); *Mitchell*, 361 U. S., at 291–293 (District Court could exercise equitable authority under Fair Labor Standards Act to order restitution); cf. *Moses* v. *Macferlan*, 2 Burr. 1005, 1012, 97 Eng. Rep. 676, 681 (K. B. 1760) ("In one word, the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."). These cases establish what the Court does not

and cannot dispute: Restitution was "within the recognized power and within the highest tradition of a court of equity." *Porter*, 328 U. S., at 402.

More important, if one's concern is to follow the Legislature's will, Congress itself has treated as equitable a type of restitution substantially similar to the relief Great-West seeks here. Congress placed in Title VII of the Civil Rights Act of 1964 the instruction that, to redress violations of the Act, courts may award, *inter alia*, "appropriate . . . equitable relief," including "reinstatement or hiring of employees, with or without back pay." 42 U. S. C. § 2000e–5(g)(1) (1994 ed.). Interpreting this provision, we have recognized that backpay is "a form of restitution," *Curtis*, 415 U. S., at 197; see *Terry*, 494 U. S., at 572, and that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief,'" *ibid.* The *Mertens* majority used Title VII's "equitable relief" provision as the touchstone for its interpretation of § 502(a)(3), see 508 U. S., at 255; today's majority declares, with remarkable inconsistency, that "Title VII has nothing to do with this case," *ante*, at 219, n. 4. The Court inexplicably fails to offer any reason why Congress did not intend "equitable relief" in § 502(a)(3) to include a plaintiff's "recover[y of] money to pay for some benefit the defendant had received from him," *ante*, at 213 (internal quotation marks omitted), but did intend those words to encompass such relief in a measure (Title VII) enacted years earlier.[2]

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[2] The Courts of Appeals have not aligned behind the Court's theory that Congress treated Title VII backpay as equitable "only in the narrow sense that" such relief is an "integral part" of the statutory remedy of reinstatement. *Ante*, at 218, n. 4. While some courts have employed the majority's rationale, others have adopted the position the Court denies: that Title VII backpay is restitutionary and "*therefore* equitable," *ibid.* See, *e. g.*, *EEOC* v. *Detroit Edison Co.*, 515 F. 2d 301, 308 (CA6 1975) ("Back pay in Title VII cases is considered a form of restitution, not an award of damages. Since restitution is an equitable remedy a jury is not required for the award of back pay."), vacated on other grounds, 431 U. S. 951 (1977); *Rogers* v. *Loether*, 467 F. 2d 1110, 1121 (CA7 1972) ("It is not unreasonable

I agree that "not *all* relief falling under the rubric of restitution [was] available in equity," *ante*, at 212 (emphasis added); restitution was also available in claims brought at law, and the majority may be correct that in such cases restitution would have been termed "legal," *ante*, at 213. But that in no way affects the answer to the question at the core of this case. Section 502(a)(3) as interpreted in *Mertens* encompasses those "categories of relief that were *typically* available in equity," 508 U. S., at 256 (emphasis in original), not those that were *exclusively* so. Restitution plainly fits that bill. By insisting that § 502(a)(3) embraces only those *claims* that, in the circumstances of the particular case, could be brought in chancery in times of yore, the majority labors against the holding of that case. Indeed, *Mertens* explicitly

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to regard an award of back pay [under Title VII] as an appropriate exercise of a chancellor's power to require restitution. Restitution is clearly an equitable remedy." (footnote omitted)), aff'd, 415 U. S. 189 (1974). See also *Hubbard* v. *EPA*, 949 F. 2d 453, 462 (CADC 1991) ("Courts have recognized the equitable nature of back pay awards in a number of different contexts. Generally, these decisions hold that back pay constitutes the very thing that the plaintiff would have received but for the defendant's illegal action; back pay is thus seen to reflect equitable restitution."), aff'd on other grounds, 982 F. 2d 531 (CADC 1992) (en banc).

Such a reading of § 2000e–5(g)(1) accords with our recognition in *Teamsters* v. *Terry*, 494 U. S. 558, 572 (1990), that "Congress specifically characterized *backpay* under Title VII as a form of 'equitable relief.'" (Emphasis added.) We were somewhat ambiguous in *Curtis* v. *Loether*, 415 U. S. 189, 197 (1974), about the rationale of the Courts of Appeals, reasoning that they had treated Title VII backpay as equitable because Congress had made backpay "an integral part of an equitable remedy, a form of restitution." But we spoke with greater clarity in *Terry*, 494 U. S., at 570–571, explaining that we could find an "exception to the general rule" that monetary relief is legal, rather than equitable, in two situations: *either* "where th[e relief is] restitutionary," a category into which we suggested Title VII backpay might fall, see *id.*, at 572 ("backpay sought from an employer under Title VII would generally be restitutionary in nature"); *or* where "a monetary award [is] 'incidental to or intertwined with injunctive relief,'" *id.*, at 571 (quoting *Tull* v. *United States*, 481 U. S. 412, 424 (1987)).

rejected a position close to the one embraced by the Court today; *Mertens* recognized that "[a]s memories of the divided bench, and familiarity with its technical refinements, recede further into the past, [an interpretation of § 502(a)(3) keyed to the relief a court of equity could award in a particular case] becomes, perhaps, increasingly unlikely." 508 U. S., at 256–257.

My objection to the inquiry the Court today adopts in spite of *Mertens* does not turn on "the difficulty of th[e] task," *ante*, at 217. To be sure, I question the Court's confidence in the ability of "the standard works" to "make the answer clear"; the Court does not indicate what rule prevails, for example, when those works conflict, as they do on key points, compare Restatement of Restitution § 160, Comment *e*, p. 645 (1936) (constructive trust over money available only where transfer procured by abuse of fiduciary relation or where legal remedy inadequate), with 1 Dobbs, Law of Remedies § 4.3(2), at 595, 597 (limitation of constructive trust to "misdealings by fiduciaries" a "misconception"; adequacy of legal remedy "seems irrelevant"). And courts have recognized that this Court's preferred method is indeed "difficult to apply," *Ross* v. *Bernhard*, 396 U. S. 531, 538, n. 10 (1970), calling for analysis that "may seem to reek unduly of the study," *Damsky* v. *Zavatt*, 289 F. 2d 46, 48 (CA2 1961) (Friendly, J.), "'if not of the museum,'" *id.*, at 59 (Clark, J., dissenting).

Even if the Court's chosen texts always yielded a quick and plain answer, however, I would think it no less implausible that Congress intended to make controlling the doctrine those texts describe. See *supra*, at 224–228. Our reliance on that doctrine in the context of the Seventh Amendment and Judiciary Act of 1789, see *ante*, at 217, underscores the incongruity of applying it here. It may be arguable that "preserving" the meaning of those founding-era provisions requires courts to determine which tribunal would have entertained a particular claim in 18th-century England. See

Grupo Mexicano, 527 U. S., at 318–319; *Terry*, 494 U. S., at 593 (KENNEDY, J., dissenting) ("We cannot preserve a right existing in 1791 unless we look to history to identify it."). But no such rationale conceivably justifies asking that question in cases arising under § 502(a)(3)(B), a provision of a distinctly modern statute Congress passed in 1974.

That the import of the term "equity" might depend on context does not signify a "rolling revision of its content," *ante*, at 217, but rather a recognition that equity, characteristically, was and should remain an evolving and dynamic jurisprudence, see *Grupo Mexicano*, 527 U. S., at 336–337 (GINSBURG, J., dissenting). Cf. *Mertens*, 508 U. S., at 257 ("[I]t remains a question of interpretation in each case which meaning [Congress] intended" to impart to the term "equitable relief."). As courts in the common-law realm have reaffirmed: "Principles of equity, we were all taught, were introduced by Lord Chancellors and their deputies . . . in order to provide relief from the inflexibility of common law rules." *Medforth* v. *Blake*, [1999] 3 All E. R. 97, 110 (C. A.); see *Boulting* v. *Association of Cinematograph, Television and Allied Technicians*, [1963] 2 Q. B. 606, 636 (C. A.) ("[A]ll rules of equity [are] flexible, in the sense that [they] develo[p] to meet the changing situations and conditions of the time."); *Pettkus* v. *Becker*, [1980] 2 S. C. R. 834, 847, 117 D. L. R. (3d) 257, 273 ("The great advantage of ancient principles of equity is their flexibility: the judiciary is thus able to shape these malleable principles so as to accommodate the changing needs and mores of society."). This Court's equation of "equity" with the rigid application of rules frozen in a bygone era, I maintain, is thus "unjustifiabl[e]" even as applied to a law grounded in that era. *Grupo Mexicano*, 527 U. S., at 336 (GINSBURG, J., dissenting). As applied to a statute like ERISA, however, such insistence is senseless.

Thus, there is no reason to ask what court would have entertained Great-West's claim "[i]n the days of the divided bench," *ante*, at 212, and no need to engage in the antiquar-

ian inquiry through which the majority attempts to answer that question. Nor would reading § 502(a)(3) to encompass restitution render the modifier "equitable" "utterly pointless," as the Court fears, *ante*, at 216. Such a construction would confine the scope of that provision to significantly "less than *all* relief," *ante*, at 209 (quoting *Mertens*, 508 U. S., at 258, n. 8). Most notably, it would exclude compensatory and punitive damages, see *id.*, at 255, which, "though *occasionally* awarded in equity" under the "clean up doctrine," *Reich* v. *Continental Casualty Co.*, 33 F. 3d 754, 756 (CA7 1994), were not typically available in such courts. See 1 S. Symons, Pomeroy's Equity Jurisprudence § 181, p. 257 (5th ed. 1941). That large limitation is indeed "unmistakable." But cf. *ante*, at 217. In sum, the reading I would adopt is entirely faithful to the core holding of *Mertens:* "[E]quitable relief" in § 502(a)(3) "refer[s] to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but not compensatory damages)." 508 U. S., at 256.

* * *

Today's decision needlessly obscures the meaning and complicates the application of § 502(a)(3). The Court's interpretation of that provision embroils federal courts in "recondite controversies better left to legal historians," *Terry*, 494 U. S., at 576 (Brennan, J., concurring in part and concurring in judgment), and yields results that are demonstrably at odds with Congress' goals in enacting ERISA. Because in my view Congress cannot plausibly be said to have "carefully crafted" such confusion, *ante*, at 221, I dissent.

Syllabus

CHAO, SECRETARY OF LABOR *v.* MALLARD BAY DRILLING, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 00–927. Argued October 31, 2001—Decided January 9, 2002

While Rig 52, respondent's oil and gas exploration barge, was drilling a well in Louisiana's territorial waters, an explosion on board killed or injured several workers. Pursuant to its statutory authority, the United States Coast Guard investigated the incident, but did not accuse respondent of violating any of its regulations. Indeed, the Coast Guard noted that the barge was an "uninspected vessel," see 46 U. S. C. § 2101(43), as opposed to an "inspected vessel" subject to comprehensive Coast Guard regulation, see § 3301. Subsequently, the Occupational Safety and Health Administration (OSHA) cited respondent for violations of the Occupational Safety and Health Act of 1970 (OSH Act or Act) and its regulations. Respondent challenged OSHA's jurisdiction to issue the citations on the grounds that Rig 52 was not a "workplace" under § 4(a) of the Act and that § 4(b)(1) of the Act pre-empted OSHA jurisdiction because the Coast Guard had exclusive authority to prescribe and enforce occupational safety and health standards on vessels such as Rig 52. In rejecting both challenges, the Administrative Law Judge found that Rig 52 was a "workplace" under the Act and held that the Coast Guard had not pre-empted OSHA's jurisdiction, explaining that there was no industry-wide exemption from OSHA regulations for uninspected vessels and no Coast Guard regulation specifically regulating the citations' subject matter. The Occupational Safety and Health Review Commission issued a final order assessing a penalty against respondent. Without addressing the § 4(a) issue, the Fifth Circuit reversed, holding that the Coast Guard's exclusive jurisdiction over the regulation of seamen's working conditions aboard vessels such as Rig 52 precluded OSHA's regulation under § 4(b)(1), and that this pre-emption encompassed both inspected and uninspected vessels.

Held:

1. Because the Coast Guard has neither affirmatively regulated the working conditions at issue, nor asserted comprehensive regulatory jurisdiction over working conditions on uninspected vessels, it has not exercised its authority under § 4(b)(1). The OSH Act does not apply to working conditions as to which other federal agencies "exercise" statutory authority to prescribe or enforce occupational safety and health

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standards or regulations. §4(b)(1), 29 U. S. C. §653(b)(1). Congress' use of "exercise" makes clear that mere possession by another federal agency of unexercised authority is insufficient to displace OSHA's jurisdiction. Furthermore, another federal agency's minimal exercise of some authority over certain vessel conditions does not result in complete pre-emption of OSHA jurisdiction. To determine whether Coast Guard regulations have pre-empted jurisdiction over Rig 52's working conditions, it is thus necessary to examine the contours of the Coast Guard's exercise of its statutory authority. With respect to *inspected* vessels, the parties do not dispute that OSHA's regulations have been pre-empted because the Coast Guard has exercised its broad statutory authority over workers' occupational health and safety, 46 U. S. C. §3306. Indeed, OSHA and the Coast Guard signed a Memorandum of Understanding recognizing that the Coast Guard has displaced OSHA's jurisdiction over all working conditions on inspected vessels, including those not addressed by specific regulations. In contrast, the Coast Guard's regulatory authority over uninspected vessels is more limited. Its general maritime regulations do not address the occupational safety and health concerns faced by inland drilling operations on such vessels and, thus, do not pre-empt OSHA's authority in this case. And, although the Coast Guard has engaged in a limited exercise of its authority to regulate specific working conditions on certain types of uninspected vessels, respondent has not identified any specific regulations addressing the types of risk and vessel at issue here. Pp. 240–245.

2. Rig 52 was a "workplace" under §4(a) of the Act. It was located within a geographic area described in §4(a)—a State—and §4(a) attaches no significance to the fact that it was anchored in navigable waters. P. 245.

212 F. 3d 898, reversed.

STEVENS, J., delivered the opinion of the Court, in which all other Members joined, except SCALIA, J., who took no part in the decision of the case.

Matthew D. Roberts argued the cause for petitioner. With him on the briefs were *Solicitor General Olson, Acting Solicitor General Underwood, Deputy Solicitor General Kneedler, Judith E. Kramer, Allen H. Feldman, Nathaniel I. Spiller, Ellen L. Beard, Edward D. Sieger, James S. Carmichael,* and *Robert F. Duncan.*

Patrick J. Veters argued the cause for respondent. With him on the brief was *John L. Duvieilh.**

JUSTICE STEVENS delivered the opinion of the Court.

Respondent operates a fleet of barges used for oil and gas exploration. On April 9, 1997, one of those barges, "Rig 52," was towed to a location in the territorial waters of Louisiana, where it drilled a well over two miles deep. On June 16, 1997, when the crew had nearly completed drilling, an explosion occurred, killing four members of the crew and injuring two others. Under United States Coast Guard regulations, the incident qualified as a "marine casualty" because it involved a commercial vessel operating "upon the navigable waters of the United States." 46 CFR § 4.03–1 (2000).

Pursuant to its statutory authority, the Coast Guard conducted an investigation of the casualty. See 46 U. S. C. §§ 6101–6104, 6301–6308 (1994 ed. and Supp. V).[1] The resulting report was limited in scope to what the Coast Guard described as "purely vessel issues," and noted that the Coast Guard "does not regulate mineral drilling operations in state waters, and does not have the expertise to adequately analyze all issues relating to the failure of an oil/natural gas well." App. to Pet. for Cert. 24a. The Coast Guard determined that natural gas had leaked from the well, spread throughout the barge, and was likely ignited by sparks in the pump room. The report made factual findings concerning the crew's actions, but did not accuse respondent of violating any Coast Guard regulations. Indeed, the report noted the

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**Jeffrey Robert White* and *Frederick M. Baron* filed a brief for the Association of Trial Lawyers of America as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Waterways Operators by *Barbara L. Holland* and *Alan P. Sherbrooke;* for the Associated General Contractors of America et al. by *Charles T. Carroll, Jr.*, and *Carl Larsen Taylor;* and for the Transportation Institute by *John Longstreth.*

[1] Unless otherwise noted, all United States Code references in this opinion are to the 1994 edition.

limits of the Coast Guard's regulation of vessels such as Rig 52: The report explained that, although Rig 52 held a Coast Guard Certificate of Documentation, it had "never been inspected by the Coast Guard and is not required to hold a Certificate of Inspection or be inspected by the Coast Guard." *Id.*, at 27a. In Coast Guard terminology, Rig 52 was an "uninspected vessel," see 46 U. S. C. § 2101(43), as opposed to one of the 14 varieties of "inspected vessels" subject to comprehensive Coast Guard regulation, see 46 U. S. C. § 3301 (1994 ed. and Supp. V).

Based largely on information obtained from the Coast Guard concerning this incident, the Occupational Safety and Health Administration (OSHA) cited respondent for three violations of the Occupational Safety and Health Act of 1970 (OSH Act or Act), 84 Stat. 1590, as amended, 29 U. S. C. § 651 *et seq.* (1994 ed. and Supp. V), and the Act's implementing regulations. The citations alleged that respondent failed promptly to evacuate employees on board the drilling rig; failed to develop and implement an emergency response plan to handle anticipated emergencies; and failed to train employees in emergency response. No. 97–1973, 1998 WL 917067, *1 (OSHRC, Dec. 28, 1998). Respondent did not deny the charges, but challenged OSHA's jurisdiction to issue the citations on two grounds: that Rig 52 was not a "workplace" within the meaning of § 4(a) of the Act;[2] and that § 4(b)(1) of the Act pre-empted OSHA jurisdiction because the Coast Guard had exclusive authority to prescribe

[2] Section 4(a) of the Act, as codified in 29 U. S. C. § 653(a), provides in part: "This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone" (citation omitted).

and enforce standards concerning occupational safety and health on vessels in navigable waters.[3]

The Administrative Law Judge (ALJ) rejected both jurisdictional challenges. Finding that respondent's "employees were not performing navigational-related activities" and that Rig 52 "was stationary and within the territorial boundaries of the State of Louisiana," he concluded that Rig 52 was a "workplace" within the meaning of the Act. *Id.*, at *3. The ALJ then held that the Coast Guard had not pre-empted OSHA's jurisdiction under § 4(b)(1), explaining that respondent had identified no basis for an "industry-wide exemption from OSHA regulations" for uninspected vessels, and had failed to identify any Coast Guard regulation "specifically regulat[ing]" the subject matter of the citations. *Id.*, at *4. In the ALJ's view, another federal agency cannot pre-empt OSHA's jurisdiction under § 4(b)(1) unless that agency *exercises* its statutory authority to regulate a particular working condition: Mere possession of the power to regulate is not enough.[4] The Occupational Safety and Health Review Commission declined review of the ALJ's decision and issued a final order assessing a penalty against respondent of $4,410 per citation. *Id.*, at *1.

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[3] Section 4(b)(1) of the Act, as codified in 29 U. S. C. § 653(b)(1), provides: "Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under [§ 274 of the Atomic Energy Act of 1954], exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."

[4] According to the ALJ: "The term 'exercise,' as used in § 4(b)(1), requires an actual assertion of regulatory authority as opposed to a mere possession of authority. OSHA jurisdiction will be preempted only as to those working conditions actually covered by the agency regulations. . . . The OSHA citation alleges that [respondent] failed to evacuate employees and failed to have an emergency response plan. [Respondent] does not argue or identify any similar requirement enforced by the U. S. Coast Guard." No. 97–1973, 1998 WL 917067, *3–4 (OSHRC, Dec. 28, 1998).

Without reaching the question whether Rig 52 was a "workplace" under § 4(a) of the OSH Act, the United States Court of Appeals for the Fifth Circuit reversed. It held that the Coast Guard "has exclusive jurisdiction over the regulation of working conditions of seamen aboard vessels such as [Rig 52], thus precluding OSHA's regulation under Section 4(b)(1) of the OSH Act." 212 F. 3d 898, 900 (2000). The Court of Appeals determined that this pre-emption encompassed uninspected vessels such as Rig 52, as well as inspected ones, explaining that the Coast Guard "has in fact exercised" its "authority to issue safety regulations for uninspected vessels"—as § 4(b)(1) requires for pre-emption. *Id.*, at 901 (stating, with respect to uninspected vessels, that the Coast Guard has issued regulations concerning "life preservers and other lifesaving equipment; emergency alerting and locating equipment; fire extinguishing equipment; backfire flame control; ventilation of tanks and engine spaces; cooking, heating, and lighting systems; safety orientation and emergency instructions; action required after an accident; and signaling lights"). However, the court conceded that "[b]ecause a drilling barge is not self-propelled, some of these regulations, by their nature, do not apply to [Rig 52]." *Id.*, at 901, n. 6.

Because other Courts of Appeals have construed the preemptive force of § 4(b)(1) more narrowly than did the Fifth Circuit, akin to the interpretation adopted by the ALJ in this case,[5] we granted certiorari to resolve the conflict. 531 U. S. 1143 (2001). We reverse, as the statute requires us to do.

The OSH Act imposes on covered employers a duty to provide working conditions that "are free from recognized hazards that are causing or are likely to cause death or serious

[5] See *Herman* v. *Tidewater Pacific, Inc.*, 160 F. 3d 1239 (CA9 1998); *In re Inspection of Norfolk Dredging Co.*, 783 F. 2d 1526 (CA11), cert. denied, 479 U. S. 883 (1986); *Donovan* v. *Red Star Marine Services, Inc.*, 739 F. 2d 774 (CA2 1984), cert. denied, 470 U. S. 1003 (1985).

bodily harm" to their employees, as well as an obligation to comply with safety standards promulgated by the Secretary of Labor. 29 U. S. C. §§ 654(a)(1), (2).[6] The coverage of the Act does not, however, extend to working conditions that are regulated by other federal agencies. To avoid overlapping regulation, § 4(b)(1) of the Act, as codified in 29 U. S. C. § 653(b)(1), provides:

> "Nothing in this [Act] shall apply to working conditions of employees with respect to which other Federal agencies . . . *exercise* statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health." (Emphasis added.)

Congress' use of the word "exercise" makes clear that, contrary to respondent's position, see, *e. g.*, Tr. of Oral Arg. 39, mere possession by another federal agency of unexercised authority to regulate certain working conditions is insufficient to displace OSHA's jurisdiction. Furthermore, another federal agency's minimal exercise of some authority over certain conditions on vessels such as Rig 52 does not result in complete pre-emption of OSHA jurisdiction, because the statute also makes clear that OSHA is only pre-empted if the working conditions at issue are the particular ones "with respect to which" another federal agency has regulated, and if such regulations "affec[t] occupational safety or health." § 653(b)(1).[7] To determine whether Coast Guard

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[6] The Secretary of Labor has delegated her authority under the Act to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. See 65 Fed. Reg. 50017 (2000).

[7] The Circuits have recognized at least two approaches for defining "working conditions" under § 4(b)(1). A "hazard-based" approach, which the Secretary of Labor endorses, focuses on "the particular physical and environmental hazards encountered by an employee" on the job. Brief for Petitioner 24; see, *e. g.*, *Donovan* v. *Red Star Marine Services, Inc.*, 739 F. 2d, at 779–780. In contrast, an "area-based" approach defines "working conditions" as the "area in which an employee customarily goes about his daily tasks." *Southern R. Co.* v. *Occupational Safety and Health Review*

regulations have pre-empted OSHA's jurisdiction over the working conditions on Rig 52, it is thus necessary to examine the contours of the Coast Guard's exercise of its statutory authority, not merely the existence of such authority.

Congress has assigned a broad and important mission to the Coast Guard. Its governing statute provides, in part:

> "The Coast Guard . . . shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department . . . ." 14 U. S. C. § 2 (2000 ed.).

Under this provision, the Coast Guard possesses authority to promulgate and enforce regulations promoting the safety of vessels anchored in state navigable waters, such as Rig 52. As mentioned above, however, in defining the Coast Guard's regulatory authority, Congress has divided the universe of vessels into two broad classes: "inspected vessels" and "uninspected vessels." In 46 U. S. C. § 3301 (1994 ed. and Supp. V), Congress has listed 14 types of vessels that are "subject to inspection" by the Coast Guard pursuant to a substantial body of rules mandated by Congress.[8] In contrast, 46

Comm'n, 539 F. 2d 335, 339 (CA4), cert. denied, 429 U. S. 999 (1976). We need not choose between these interpretations, however, because the Coast Guard did not regulate the "working conditions" at issue in this case under either definition of the term.

[8] "The following categories of vessels are subject to inspection under this part: (1) freight vessels. (2) nautical school vessels. (3) offshore supply vessels. (4) passenger vessels. (5) sailing school vessels. (6) seagoing barges. (7) seagoing motor vessels. (8) small passenger vessels. (9) steam vessels. (10) tank vessels. (11) fish processing vessels. (12) fish tender vessels. (13) Great Lakes barges. (14) oil spill response vessels."

U. S. C. § 2101(43) defines an "uninspected vessel" as "a vessel not subject to inspection under section 3301 . . . that is not a recreational vessel."

The parties do not dispute that OSHA's regulations have been pre-empted with respect to *inspected* vessels, because the Coast Guard has broad statutory authority to regulate the occupational health and safety of seamen aboard inspected vessels, 46 U. S. C. § 3306 (1994 ed. and Supp. V), and it has exercised that authority. Indeed, the Coast Guard and OSHA signed a "Memorandum of Understanding" (MOU) on March 17, 1983, evidencing their agreement that, as a result of the Coast Guard's exercise of comprehensive authority over inspected vessels, OSHA "may not enforce the OSH Act with respect to the working conditions of seamen aboard inspected vessels." 48 Fed. Reg. 11365. The MOU recognizes that the exercise of the Coast Guard's authority—and hence the displacement of OSHA jurisdiction—extends not only to those working conditions on inspected vessels specifically discussed by Coast Guard regulations, but to all working conditions on inspected vessels, including those "not addressed by the specific regulations." *Ibid.* Thus, as OSHA recognized in the MOU, another agency may "exercise" its authority within the meaning of § 4(b)(1) of the OSH Act either by promulgating specific regulations or by asserting comprehensive regulatory authority over a certain category of vessels.

Uninspected vessels such as Rig 52, however, present an entirely different regulatory situation. Nearly all of the Coast Guard regulations responsible for displacing OSHA's jurisdiction over inspected vessels, as described in the MOU, do not apply to uninspected vessels like Rig 52. See 46 U. S. C. § 2101(43). Rather, in the context of uninspected vessels, the Coast Guard's regulatory authority—and exercise thereof—is more limited. With respect to uninspected vessels, the Coast Guard regulates matters related to marine

safety, such as fire extinguishers, life preservers, engine flame arrestors, engine ventilation, and emergency locating equipment. See 46 U. S. C. § 4102 (1994 ed. and Supp. V); 46 CFR pts. 24–26 (2000). Because these general marine safety regulations do not address the occupational safety and health concerns faced by inland drilling operations on uninspected vessels, they do not pre-empt OSHA's authority under § 4(b)(1) in this case. Indeed, as the Court of Appeals acknowledged, many of these general Coast Guard regulations for uninspected vessels do not even apply to stationary barges like Rig 52. See 212 F. 3d, at 901, n. 6.

In addition to issuing these general marine safety regulations, the Coast Guard has exercised its statutory authority to regulate a number of specific working conditions on certain types of uninspected vessels. For example, the Coast Guard regulates drilling operations that take place on the outer continental shelf. See 43 U. S. C. § 1333(a)(1); 33 CFR pt. 142 (2000). And it is true that some of these more specific regulations would, pursuant to § 4(b)(1), pre-empt OSHA regulations covering those particular working conditions and vessels. But respondent has not identified any specific Coast Guard regulations that address the types of risk and vessel at issue in this case: namely, dangers from oil-drilling operations on uninspected barges in inland waters. Simply because the Coast Guard has engaged in a limited exercise of its authority to address certain working conditions pertaining to certain classes of uninspected vessels does not mean that *all* OSHA regulation of *all* uninspected vessels has been pre-empted. See 29 U. S. C. § 653(b)(1) (pre-emption only extends to working conditions *"with respect to which"* other federal agencies have exercised their authority (emphasis added)). Because the Coast Guard has neither affirmatively regulated the working conditions at issue in this case, nor asserted comprehensive regulatory jurisdiction

over working conditions on uninspected vessels, the Coast Guard has not "exercise[d]" its authority under § 4(b)(1).[9]

We think it equally clear that Rig 52 was a "workplace" as that term is defined in § 4(a) of the Act. The vessel was located within the geographic area described in the definition: "a State," 29 U. S. C. § 653(a), namely, Louisiana. Nothing in the text of § 4(a) attaches any significance to the fact that the barge was anchored in navigable waters. Rather, the other geographic areas described in § 4(a) support a reading of that provision that includes a State's navigable waters: for example, § 4(a) covers the Outer Continental Shelf, and sensibly extends to drilling operations attached thereto. Cf. 43 U. S. C. § 1333(a)(1).

Accordingly, the judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE SCALIA took no part in the decision of this case.

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[9] The statutory provisions themselves resolve this case, because the Coast Guard has not "exercise[d]" authority under § 4(b)(1) with respect to the working conditions at issue here. It is worth noting, however, that this interpretation of § 4(b)(1)'s pre-emptive scope comports with the OSH Act's fundamental purpose: "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." 29 U. S. C. § 651(b). As respondent declared at oral argument, its interpretation of § 4(b)(1) would mean that if the Coast Guard regulated marine toilets on Rig 52 and nothing more, any OSHA regulation of the vessel would be pre-empted. Tr. of Oral Arg. 20. Such large gaps in the regulation of occupational health and safety would be plainly inconsistent with the purpose of the OSH Act.

Syllabus

KELLY *v.* SOUTH CAROLINA

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

No. 00–9280. Argued November 26, 2001—Decided January 9, 2002

After convicting petitioner Kelly of murder and related crimes, a South Carolina jury was asked to determine whether any aggravating factors had been shown and, if so, to recommend a sentence of death or life imprisonment. At the sentencing proceeding, the prosecutor presented testimony that Kelly had made a knife while in prison and taken part in an escape attempt with plans to hold a female guard hostage. The prosecutor's cross-examination of a psychologist brought out evidence of Kelly's sadism at an early age and his current desires to kill anyone who irritated him. In his closing argument, the prosecutor spoke of Kelly as a "dangerous" "bloody" "butcher." Relying on the holding of *Simmons* v. *South Carolina*, 512 U. S. 154—that when "a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death . . . is life imprisonment without possibility of parole, due process entitles the defendant 'to inform the jury of [his] parole ineligibility,'" *Shafer* v. *South Carolina*, 532 U. S. 36, 39—defense counsel requested a jury instruction stating that Kelly would be ineligible for parole if he received a life sentence. The trial court refused, saying that the State's evidence went to Kelly's character and characteristics, not to future dangerousness. The jury recommended a death sentence. In affirming the sentence, the State Supreme Court held *Simmons* inapposite for two reasons: state law provided the jury with a third sentencing alternative, and future dangerousness was not at issue.

Held: Kelly was entitled to a jury instruction that he would be ineligible for parole under a life sentence. The State Supreme Court's statement that *Simmons* is inapplicable under South Carolina's new sentencing scheme because life without the possibility of parole is not the only legally available sentence alternative to death mistakes the relationship of *Simmons* to the state sentencing scheme. Although a murder defendant facing a possible death sentence can, under some circumstances, receive a sentence less than life imprisonment, under the state scheme a jury now makes a sentencing recommendation only if the jurors find an aggravating circumstance. When they do make a recommendation, their only alternatives are death or life without parole. Thus, the state court's reasoning is not to the point. The court also erred in ruling that Kelly's future dangerousness is not at issue. The evidence and argument cited by the court are flatly at odds with that conclusion. The

court saw the evidence as going only to Kelly's behavior in prison, or to his proclivity to escape from it, and overlooked the fact that evidence of violent behavior in prison can raise a strong implication of generalized future dangerousness, *Simmons*, *supra*, at 171. A jury hearing evidence of a defendant's propensity for violence reasonably will conclude that he presents a risk of violent behavior, whether locked up or free, and whether free as a fugitive or as a parolee. Evidence of future dangerousness under *Simmons* is evidence with a tendency to prove dangerousness in the future; its relevance to that point does not disappear merely because it might support other inferences or be described in other terms. The prosecutor accentuated the clear inference of future dangerousness raised by the evidence and placed the case within the four corners of *Simmons*. Although his characterizations of butchery went to retribution, that did not make them any the less arguments that Kelly would be dangerous down the road. Thus was Kelly's jury, like its predecessor in *Simmons*, invited to infer "that petitioner is a vicious predator who would pose a continuing threat to the community." *Simmons*, *supra*, at 176. It is not dispositive that Kelly's jury did not ask the judge for further instruction on parole eligibility, whereas the *Simmons* and *Shafer* juries did. A trial judge's duty is to give instructions sufficient to explain the law, an obligation that exists independently of any question from the jurors or any other indication of perplexity on their part. Nor is there any reason to believe that Kelly's jury was better informed than Simmons's or Shafer's on the matter of parole eligibility. Pp. 251–258.

343 S. C. 350, 540 S. E. 2d 851, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 258. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 262.

David I. Bruck, by appointment of the Court, 534 U. S. 809, argued the cause for petitioner. With him on the briefs was *Robert M. Dudek*.

S. Creighton Waters, Assistant Attorney General of South Carolina, argued the cause for respondent. With him on the brief were *Charles M. Condon*, Attorney General, *John W. McIntosh*, Chief Deputy Attorney General, and *Donald J. Zelenka*, Assistant Deputy Attorney General.

JUSTICE SOUTER delivered the opinion of the Court.

Last Term, we reiterated the holding of *Simmons* v. *South Carolina*, 512 U. S. 154 (1994), that when "a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole, due process entitles the defendant 'to inform the jury of [his] parole ineligibility, either by a jury instruction or in arguments by counsel.'" *Shafer* v. *South Carolina*, 532 U. S. 36, 39 (2001) (quoting *Ramdass* v. *Angelone*, 530 U. S. 156, 165 (2000) (plurality opinion)). In this case, the Supreme Court of South Carolina held *Simmons* inapposite for two reasons: state law provided the jury with a third sentencing alternative, and future dangerousness was not at issue. Each reason was error.

I

In 1996, the State of South Carolina indicted petitioner William Kelly for an extraordinarily brutal murder, kidnaping, and armed robbery, and for possession of a knife during the commission of a violent crime. The jury convicted Kelly on all charges.

The trial then proceeded to a separate sentencing phase calling for the jury to determine whether any aggravating factor had been shown and, if so, to choose between recommendations of death or life imprisonment. The prosecutor began by telling the jurors that "I hope you never in your lives again have to experience what you are experiencing right now. Being some thirty feet away from such a person. Murderer." App. 64. He went on to present testimony that while in prison, Kelly had made a knife (or shank) and had taken part in an escape attempt, even to the point of planning to draw a female guard into his cell where he would hold her hostage. See *id.*, at 129–132, 140–141. The prosecutor's cross-examination of a psychologist brought out evi-

dence of Kelly's sadism at an early age, see *id.*, at 218, and his inclination to kill anyone who rubbed him the wrong way, see *id.*, at 195.

After presentation of this evidence but before closing arguments, Kelly's counsel relied on *Simmons* in requesting the judge to instruct the jurors that if Kelly received a sentence of life imprisonment, he would be ineligible for parole. The instruction she sought was a near-verbatim excerpt of S. C. Code Ann. § 16–3–20 (2000 Cum. Supp.):

> "'[L]ife imprisonment' means imprisonment until the death of the offender. No person sentenced to life imprisonment is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by law." 343 S. C. 350, 360, 540 S. E. 2d 851, 856 (2001).

The prosecutor objected that "I'm not going to argue future dangerous[ness]. So that takes it out of *Simmons* anyhow." App. 245. The defense responded that "the State ha[d] already raised future dangerousness" through presentation of sentencing phase evidence, "calling correctional officers to testify to an escape attempt, to testify to the fact that [Kelly] had possession of a shank, by calling inmates who testified to [Kelly's] behavior in the jail . . . [and] his plan to take a female guard hostage." *Ibid.* Defense counsel argued that the State's cross-examination of the psychologist reinforced the other evidentiary indications of Kelly's future dangerousness. *Id.*, at 245–246. The trial court denied the requested instruction, saying that the State's evidence went to Kelly's character and characteristics, not to future dangerousness. *Id.*, at 249.

The sentencing proceeding then closed with arguments in which the prosecutor spoke of Kelly as "the butcher of Bates-

burg," "Bloody Billy," and "Billy the Kid." *Id.*, at 267–268. The prosecutor told the jurors that "[Kelly] doesn't have any mental illness. He's intelligent. . . . He's quick-witted. Doesn't that make somebody a little more dangerous—" *id.*, at 269. Defense counsel interrupted the prosecutor in mid-sentence with an objection, presumably for raising Kelly's future dangerousness. The prosecutor nonetheless went on immediately, "—for this lady, this crime on January the 5th, doesn't that make him more unpredictable for [the victim] Shirley Shealy." *Ibid.* Kelly's counsel did not renew her objection, and the trial court never ruled on the objection entered.[1] The prosecutor continued that "murderers will be murderers. And he is the cold-blooded one right over there." *Id.*, at 272.

After the closing arguments, the trial judge instructed the jury that in choosing between recommendations of death and life imprisonment, it should consider the possible presence of five statutory aggravating circumstances, and three possible statutory mitigating circumstances. The judge explained "that the terms 'life imprisonment' and 'death sentence' are to be understood in this ordinary and plain meaning." *Id.*, at 289. But, in accordance with the earlier ruling, the court did not say that under South Carolina law, a convicted murderer sentenced to life imprisonment was ineligible for parole, nor did the court instruct that Kelly's future dangerousness was not in issue. At the end of the charge, Kelly's counsel renewed her objection to the court's refusal to give her requested *Simmons* instruction or, in the alternative, to inform the jury that the State had stipulated that future dangerousness was not in issue in the case. App. 304.

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[1] Although the State Supreme Court referred to this portion of the prosecutor's argument, it did not indicate that defense counsel had objected between the prosecutor's description of Kelly as "dangerous" and his subsequent characterization of Kelly as dangerous to the victim. 343 S. C. 350, 360, 540 S. E. 2d 851, 856 (2001).

After deliberating for 43 minutes, the jury found five statutory aggravating circumstances beyond a reasonable doubt and returned a recommendation of death, *id.*, at 305–307, to which the trial court acceded.

On appeal to the Supreme Court of South Carolina, Kelly assigned error to the trial court's refusal to instruct that he would be ineligible for parole under a life sentence. The State Supreme Court ruled otherwise and gave two alternative grounds for affirming the sentence. First, it followed the trial court in saying that the State's evidence at sentencing did not raise future dangerousness and so did not trigger *Simmons:* "[W]e agree with the trial court that the State's evidence at sentencing did not implicate future dangerousness. . . . In our opinion, the evidence presented by the State in the penalty phase was designed to show that Kelly would not adapt to prison life . . . ." 343 S. C., at 362, 540 S. E. 2d, at 857. Second, relying on its own ruling in *State* v. *Shafer,* 340 S. C. 291, 531 S. E. 2d 524 (2000), rev'd, *Shafer* v. *South Carolina,* 532 U. S. 36 (2001), the state court held that *Simmons* had no application to the sentencing regime in place at Kelly's trial. 343 S. C., at 364, 540 S. E. 2d, at 858. The State Supreme Court committed error on each point. We granted certiorari, 533 U. S. 928 (2001), and now reverse.

II

We take the State Supreme Court's reasons out of order, for the second one can be answered with little more than citation to *Shafer,* in which we reversed a South Carolina judgment last Term. The state court said that "*Simmons* is inapplicable under [South Carolina's] new sentencing scheme because life without the possibility of parole is not the only legally available sentence alternative to death." 343 S. C., at 364, 540 S. E. 2d, at 858. That statement mistakes the relationship of *Simmons* to the state sentencing scheme. It is true that a defendant charged with murder carrying the

possibility of a death sentence can, under some circumstances, receive a sentence less than life imprisonment. But, as we explained in *Shafer*, under the South Carolina sentencing scheme a jury now makes a sentencing recommendation only if the jurors find the existence of an aggravating circumstance. When they do make a recommendation, their only alternatives are death or life without parole. 532 U. S., at 49–50.[2] We therefore hold, as we did in *Shafer*, that the state court's reasoning is not to the point.

The State Supreme Court's first ground, that Kelly's future dangerousness was not "at issue," is unsupportable on the record before us. It is not that the state court failed to pose the legal issue accurately, for in considering the applicability of *Simmons* it asked whether Kelly's future dangerousness was "a logical inference from the evidence," or was "injected into the case through the State's closing argument." 343 S. C., at 363, 540 S. E. 2d, at 857; see also *Shafer*, *supra*, at 54–55 (whether prosecutor's evidence or argument placed future dangerousness in issue); *Simmons*, 512 U. S., at 165, 171 (plurality opinion) (future dangerousness in issue because "State raised the specter of . . . future dangerousness generally" and "advanc[ed] generalized arguments regarding the [same]"); *id.*, at 174 (GINSBURG, J., concurring); *id.*, at 177 (O'CONNOR, J., concurring in judgment). The error, rather,

[2] Under South Carolina law, capital jurors first must decide whether the State has proven the existence of any statutory aggravating circumstance beyond a reasonable doubt. If the jury cannot agree unanimously on the presence of such a circumstance, it cannot make a sentencing recommendation; the judge is then charged with sentencing the defendant either to life imprisonment without parole or to a prison term of at least 30 years. S. C. Code Ann. §§ 16–3–20(B), (C) (2000 Cum. Supp.); *State* v. *Starnes*, 340 S. C. 312, 328, 531 S. E. 2d 907, 916 (2000). But, if the jury does unanimously find a statutory aggravating circumstance, it recommends one of two possible sentences: death or life imprisonment without the possibility of parole. §§ 16–3–20(A), (B). The jury has no other sentencing option.

was on the facts: the evidence and argument cited by the state court are flatly at odds with the view that "future dangerousness was not an issue in this case." 343 S. C., at 363, 540 S. E. 2d, at 857.

The court acknowledged the prosecutor's "[e]vidence that Kelly took part in escape attempts and carried a shank," *id.*, at 362, 540 S. E. 2d, at 857, and that "he had been caught carrying a weapon and planning or participating in escape attempts," *ibid.* The court concluded, however, that this evidence was not the sort contemplated by *Simmons*, that is, evidence demonstrating future danger "'*if released* from prison.'" 343 S. C., at 362, n. 8, 540 S. E. 2d, at 857, n. 8 (quoting *Simmons, supra*, at 163) (emphasis added by state court). The court saw the evidence as going only to Kelly's likely behavior in prison, or to his proclivity to escape from it; the state court said that Kelly was allowed to rebut this evidence of his inability to adapt to prison life, but that explaining parole ineligibility would do nothing to rebut evidence that Kelly was an escape risk. 343 S. C., at 362–363, 540 S. E. 2d, at 857.

Even if we confine the evidentiary consideration to the evidence discussed by the State Supreme Court, the court's conclusion cannot be accepted. To the extent that it thought that "[e]vidence that Kelly took part in escape attempts and carried a shank . . . is not the type of future dangerousness evidence contemplated by *Simmons*," *id.*, at 362, 540 S. E. 2d, at 857, it overlooked that evidence of violent behavior in prison can raise a strong implication of "generalized . . . future dangerousness." *Simmons, supra*, at 171. (And, of course, the state court's reasoning says nothing about the evidence of the crime, or of Kelly's sadism generally, and his mercurial thirst for vengeance.) A jury hearing evidence of a defendant's demonstrated propensity for violence reasonably will conclude that he presents a risk of violent behavior,

whether locked up or free, and whether free as a fugitive or as a parolee.[3]

The fallacy of the State Supreme Court's attempt to portray the thrust of the evidence as so unrealistically limited harks back to a comparable mistake by the trial judge, who spoke of the evidence as going, not to future dangerousness, but "to [Kelly's] character and characteristics." App. 249. The error in trying to distinguish *Simmons* this way lies in failing to recognize that evidence of dangerous "character" may show "characteristic" future dangerousness, as it did here. This, indeed, is the fault of the State's more general argument before us, that evidence of future dangerousness counts under *Simmons* only when the State "introduc[es] evidence for which there is *no other possible inference* but future dangerousness to society." Brief for Respondent 27 (emphasis in original). Evidence of future dangerousness under *Simmons* is evidence with a tendency to prove dangerousness in the future; its relevance to that point does not disappear merely because it might support other inferences or be described in other terms.[4]

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[3] THE CHIEF JUSTICE's dissent correctly notes that a required instruction on parole eligibility does not bar a prosecutor from arguing dangerousness in prison as a ground for choosing the death penalty. See *post*, at 261. The plurality acknowledged this possibility in *Simmons* v. *South Carolina*, 512 U. S. 154, 165, n. 5 (1994) ("[T]he fact that a defendant is parole ineligible does not prevent the State from arguing that the defendant poses a future danger"); see also *id.*, at 177 (O'CONNOR, J., concurring in judgment) (when the defendant "bring[s] his parole ineligibility to the jury's attention" "the prosecution is free to argue that the defendant would be dangerous in prison"). But the plurality also recognized that even if a "State [were] free to argue that the defendant will pose a danger to others in prison," *id.*, at 165, n. 5, the State was not free to "mislead the jury by concealing accurate information about the defendant's parole ineligibility," *ibid.*

[4] AS THE CHIEF JUSTICE says, see *post*, at 261 (dissenting opinion), it may well be that the evidence in a substantial proportion, if not all, capital cases will show a defendant likely to be dangerous in the future. See *Simmons*, *supra*, at 163 (plurality opinion) (noting that "prosecutors in South Carolina, like those in other States that impose the death penalty,

The prosecutor accentuated the clear implication of future dangerousness raised by the evidence and placed the case within the four corners of *Simmons*. He had already expressed his hope that the jurors would "never in [their] lives again have to experience . . . [b]eing some thirty feet away from such a person" as Kelly. App. 64. The State Supreme Court made no mention of this, despite its thrust: since the jurors were unlikely to be spending any time in prison, they would end up 30 feet away from the likes of Kelly only if he got out of prison, as he might if parole were possible. The argument thus echoed the one made in *Simmons* itself, that the imposition of the death penalty was an act of "self-defense." Both statements "implied that petitioner *would* be let out eventually if the jury did not recommend a death sentence." 512 U. S., at 178 (O'CONNOR, J., concurring in judgment) (emphasis in original).

And there was more. The state court to be sure considered the prosecutor's comparison of Kelly to a notorious serial killer, variously calling him a "dangerous" "bloody" "butcher." The court nonetheless thought it could somehow cordon off these statements as raising nothing more than a call for retribution. 343 S. C., at 363, 540 S. E. 2d, at 857. But the import of the argument simply cannot be compartmentalized this way. Characterizations of butchery did go to retribution, but that did not make them any the less arguments that Kelly would be dangerous down the road.[5] They

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frequently emphasize a defendant's future dangerousness in their evidence and argument at the sentencing phase"). But this is not an issue here, nor is there an issue about a defendant's entitlement to instruction on a parole ineligibility law when the State's evidence shows future dangerousness but the prosecutor does not argue it. The only questions in this case are whether the evidence presented and the argument made at Kelly's trial placed future dangerousness at issue. The answer to each question is yes, and we need go no further than *Simmons* in our discussion.

[5] Nor, as the State Supreme Court thought, was evidence, elicited by the prosecution, that Kelly "took part in escape attempts," 343 S. C., at 362, 540 S. E. 2d, at 857, somehow distinct from indications of dangerousness. It is true that evidence of propensity to escape does not necessarily

complemented the prosecutor's submissions that Kelly was "more frightening than a serial killer," App. 260, and that "murderers will be murderers," *id.*, at 272.[6] Thus was Kelly's jury, like its predecessor in *Simmons*, invited to infer "that petitioner is a vicious predator who would pose a continuing threat to the community." *Simmons*, *supra*, at 176 (O'CONNOR, J., concurring in judgment).

Perhaps because this is so undeniable, the State in its argument before us takes a tack never pursued by the state court, in claiming there was no need for instruction on parole ineligibility, because "there is nothing whatsoever to indicate that the jurors were concerned at all with the possibility of [Kelly's] future release when they decided death was appropriate." Brief for Respondent 47. But it cannot matter that Kelly's jury did not ask the judge for further instruction on parole eligibility, whereas the *Simmons* and *Shafer* juries did. See *Shafer*, 532 U. S., at 44; *Simmons*, *supra*, at 160. A trial judge's duty is to give instructions sufficient to explain the law, an obligation that exists independently of any question from the jurors or any other indication of perplexity on their part. Cf. C. Wright, Federal Practice and Procedure § 485, p. 375 (3d ed. 2000) ("It is the duty of the trial judge to charge the jury on all essential questions of law, whether requested or not"). Time after time appellate courts have found jury instructions to be insufficiently clear without any record that the jury manifested its confusion; one need look no further than *Penry* v. *Johnson*, 532 U. S. 782 (2001), for a recent example. While the jurors' questions in *Simmons* and *Shafer* confirmed the inadequacy of the charges in those cases, in each case it was independently

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put future dangerousness at issue, but here, the prosecution proffered evidence of at least one violent escape attempt. The evidence of Kelly's plan to take a female guard hostage with a shank underscored a propensity for violence in addition to a predilection to escape.

[6] The latter statement, in fact, speaks not to Kelly's past conduct, but to his future deportment.

significant that "[d]isplacement of 'the longstanding practice of parole availability' remains a relatively recent development [in South Carolina], and 'common sense tells us that many jurors might not know whether a life sentence carries with it the possibility of parole.'" 532 U. S., at 52 (quoting *Simmons*, *supra*, at 177–178 (O'CONNOR, J., concurring in judgment)).[7]

Nor is there any reason to believe that Kelly's jury was better informed than Simmons's or Shafer's on the matter of parole eligibility. The State, to be sure, emphasizes defense counsel's opening statement that the jury's recommendation would be "the sentence actually imposed and the sentence that will actually be carried out," Record 1660, as well as counsel's closing, which stressed that Kelly would be in prison for the rest of his life and would "never see the light of daylight again," *id.*, at 2060. The State stresses that the judge told the jury that the terms "life imprisonment" and "death sentence" should be understood in their plain and ordinary meanings. App. 289.

But the same things could be said of *Shafer*, where we explicitly noted defense counsel's statement to the jury that Shafer would "'die in prison' after 'spend[ing] his natural life there,'" as well as the trial judge's instructions that "'life imprisonment means until the death of the defendant.'" 532 U. S., at 52 (emphasis deleted). We found these statements inadequate to convey a clear understanding of Shafer's parole ineligibility, *id.*, at 53–54,[8] and Kelly, no less than Shafer, was entitled to his requested jury instruction.

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[7] Whether this history of penology should suffice to require a *Simmons* instruction regardless of the details of evidence and argument going to future dangerousness is a question not raised by this case, in which evidence and argument did place dangerousness in issue.

[8] If Kelly's counsel had read the law verbatim to the jury with the judge's manifest approval, that might have sufficed, but the State does not claim that defense counsel had any such opportunity, and conceded at oral argument that it is "very unlikely" that the trial judge would have permit-

The judgment of the Supreme Court of South Carolina is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE KENNEDY joins, dissenting.

In *Simmons* v. *South Carolina*, 512 U. S. 154 (1994), the prevailing opinion said:

> "In a State in which parole is available, the Constitution does not require (or preclude) jury consideration of that fact. Likewise, if the prosecution does not argue future dangerousness, the State may appropriately decide that parole is not a proper issue for the jury's consideration even if the only alternative sentence to death is life imprisonment without possibility of parole.
>
> "When the State seeks to show the defendant's future dangerousness, however, the fact that he will never be released from prison will often be the only way that a violent criminal can successfully rebut the State's case. . . . And despite our general deference to state decisions regarding what the jury should be told about sentencing, I agree that due process requires that the defendant be allowed to do so in cases in which the only available alternative sentence to death is life imprisonment without possibility of parole and the prosecution argues that the defendant will pose a threat to society in the future." *Id.*, at 176–177 (O'CONNOR, J., concurring in judgment).

But today, while purporting to merely "apply" *Simmons*, the Court converts a tenable due process holding into a "truth in sentencing" doctrine which may be desirable policy, but

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ted defense counsel to read to the jury the relevant section of the South Carolina Code. See Tr. of Oral Arg. 51.

has almost no connection with the due process rationale of *Simmons*.

In some States—Texas, for example, see Tex. Crim. Proc. Code Ann. §§37.071(b) and (g) (2001)—"future dangerousness" is itself a ground for imposing the death penalty in a capital case. In *California* v. *Ramos*, 463 U. S. 992 (1983), we held that such a system was consistent with the Eighth Amendment. But South Carolina's capital punishment system does not work that way. There are 11 statutory aggravating factors which may be found by the jury that must be weighed against mitigating factors.* See S. C. Code Ann.

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*The statutory aggravating factors are:

"(1) The murder was committed while in the commission of the following crimes or acts:

"(a) criminal sexual conduct in any degree;

"(b) kidnapping;

"(c) burglary in any degree;

"(d) robbery while armed with a deadly weapon;

"(e) larceny with use of a deadly weapon;

"(f) killing by poison;

"(g) drug trafficking as defined in Section 44–53–370(e), 44–53–375(B), 44–53–440, or 44–53–445;

"(h) physical torture; or

"(i) dismemberment of a person.

"(2) The murder was committed by a person with a prior conviction for murder.

"(3) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.

"(4) The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.

"(5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.

"(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

"(7) The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former cor-

§ 16–3–20(C) (2001). At the sentencing phase of petitioner's trial, the State argued, and the jury found, the statutory aggravators that the murder was committed while in the commission of: kidnaping; burglary; robbery while armed with a deadly weapon; larceny with use of a deadly weapon; and physical torture. Once a South Carolina jury has found the necessary aggravators, it may consider future dangerousness in determining what sentence to impose.

In the present case, the prosecutor did not argue future dangerousness—as he did in *Simmons*—in any meaningful sense of that term. But the Court says that he need not, in order for the defendant to invoke *Simmons;* it is enough if evidence introduced to prove other elements of the case has a tendency to prove future dangerousness as well. Gone is the due process basis for the rule—that where the State argues that the defendant will be dangerous in the future, the defendant is entitled to inform the jury by way of rebuttal that he will be in prison for life. Thus, the *Simmons* rule is invoked, not in reference to any contention made by the State, but only by the existence of evidence from which a jury might infer future dangerousness. And evidence there will surely be in a case such as the present one, correctly described by the Court as "an extraordinarily brutal murder." *Ante,* at 248.

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rections employee, or fireman or former fireman during or because of the performance of his official duties.

"(8) The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. 'Family member' means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or marriage.

"(9) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

"(10) The murder of a child eleven years of age or under.

"(11) The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime." S. C. Code Ann. § 16–3–20(C) (2001).

That today's decision departs from *Simmons* is evident from the Court's rejection of the South Carolina Supreme Court's distinction between evidence regarding danger to fellow inmates and evidence regarding danger to society at large. *Simmons* itself recognized this distinction. Immediately after holding that the defendant should be allowed to show that "he never would be released on parole and thus, in his view, would not pose a future danger *to society*," 512 U. S., at 165 (emphasis added), *Simmons* noted that "[t]he State is free to argue that the defendant will pose a danger to others in prison and that executing him is the only means of eliminating the threat to the safety of other inmates or prison staff," *id.*, at 165, n. 5. See also *id.*, at 177 (O'CONNOR, J., concurring in judgment) (noting that where a parole ineligibility instruction is given, "the prosecution is free to argue that the defendant would be dangerous in prison"). This makes eminent good sense, for when the State argues that the defendant poses a threat to his cellmates or prison guards, it is no answer to say that he never will be released from prison.

But the test is no longer whether the State argues future dangerousness to society; the test is now whether evidence was introduced at trial that raises an "implication" of future dangerousness to society. *Ante*, at 253. It is difficult to envision a capital sentencing hearing where the State presents no evidence from which a juror might make such an inference. I would hazard a guess that many jurors found the sheer brutality of this crime—petitioner bound the hands of the victim (who was six months pregnant) behind her back, stabbed her over 30 times, slit her throat from ear to ear, and left dollar bills fastened to her bloodied body—indicative of petitioner's future threat to society. Yet all of this evidence was introduced not to prove future dangerousness, but to prove other elements required by South Carolina law, including the statutory aggravating factor that the murder was committed while in the commission of physical torture.

To be sure, the prosecutor's arguments about the details of the murder, as well as the violent episodes in prison, demonstrated petitioner's evil character. Yet if this were what *Simmons* intended with the phrase "future dangerousness," it would have held that the Constitution *always* required an instruction about parole ineligibility. It plainly did not.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

THE CHIEF JUSTICE, in dissent, concludes that, with the Court's opinion, "[g]one is the due process basis for the *[Simmons]* rule—that where the State argues that the defendant will be dangerous in the future, the defendant is entitled to inform the jury by way of rebuttal that he will be in prison for life." *Ante*, at 260. I write separately because I continue to believe that there never was a "basis for such a pronouncement." *Simmons* v. *South Carolina*, 512 U. S. 154, 178 (1994) (SCALIA, J., dissenting). Indeed, the decision today merely solidifies my belief that the Court was wrong, in the first instance, to hold that the Due Process Clause requires the States to permit a capital defendant to inform the jury that he is parole ineligible in cases where the prosecutor argues future dangerousness.

While we were informed in *Simmons* that the Court's intent was to create a requirement that would apply in only a limited number of cases, today's sweeping rule was an entirely foreseeable consequence of *Simmons*. See *id.*, at 183. The decisive opinion[1] noted that "if the prosecution does not argue future dangerousness, the State may appropriately decide that parole is not a proper issue for the jury's consider-

[1] Justice Blackmun's plurality opinion in *Simmons* was joined by three Members of the Court. JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE and JUSTICE KENNEDY, provided the necessary votes to sustain the judgment. Concurring in the judgment, JUSTICE O'CONNOR therefore wrote the decisive opinion. See *O'Dell* v. *Netherland*, 521 U. S. 151, 158–159 (1997).

ation even if the only alternative sentence to death is life imprisonment without possibility of parole." *Id.*, at 176–177 (O'CONNOR, J., concurring in judgment). One might think from this language that the Court meant to preserve in most cases the State's role in determining whether to instruct a jury regarding a defendant's eligibility for parole. But the decisive opinion seriously diminished the State's discretion in this area, holding that due process requires that "[w]hen the State *seeks to show* the defendant's future dangerousness . . . the defendant should be allowed to bring his parole ineligibility to the jury's attention." *Id.*, at 177 (emphasis added).[2] Applying this rule, the Court concluded that the prosecution "put [Simmons'] future dangerousness in issue" and that due process required that the instruction be given. *Id.*, at 177–178.

After *Simmons*, we were left with a due process requirement that hinged on a factual inquiry as to whether the State somehow "show[ed] the defendant's future dangerousness," "argue[d] future dangerousness, " or "put . . . future dangerousness in issue." *Id.*, at 176–177. Given such an imprecise standard, it is not at all surprising that the Court today easily fits the State's argument during Kelly's proceedings into the universe of arguments that trigger the *Simmons* requirement. But the Court goes even further. In making this factual judgment, the Court dilutes the *Simmons* test, now requiring that a parole ineligibility instruction be given where the prosecution makes arguments that have a "*tendency* to prove dangerousness in the future." *Ante*, at 254 (emphasis added).

This expansion is not surprising when one considers that in *Simmons* the Court applied its own rule loosely. Placed

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[2] The plurality opinion used broader language, stating that due process requires the instruction when the "prosecution allude[s]" to the defendant's future dangerousness or "advanc[es] generalized arguments regarding the defendant's future dangerousness." *Simmons* v. *South Carolina*, 512 U. S., at 164, 171.

in context, the prosecutor *there* neither "emphasiz[ed] future dangerousness as a crucial factor" nor even mentioned "future dangerousness *outside of prison*." 512 U. S., at 181 (SCALIA, J., dissenting).[3] Thus, while I agree with THE CHIEF JUSTICE that the prosecutor *here* did not argue future dangerousness, an effort to distinguish this case from *Simmons* amounts to hairsplitting, demonstrating that the Court's inability to construct a limited rule inhered in *Simmons* itself. Today, the Court acknowledges that "the evidence in a substantial proportion, if not all, capital cases will show a defendant likely to be dangerous in the future." *Ante*, at 254, n. 4. "All" is the more accurate alternative, given that our capital jurisprudence has held that routine murder does not qualify, but only a more narrowly circumscribed class of crimes such as those that "reflec[t] a consciousness materially more 'depraved' than that of any person guilty of murder," *Godfrey* v. *Georgia*, 446 U. S. 420, 433 (1980) (plurality opinion). See also *Lowenfield* v. *Phelps*, 484 U. S. 231, 246 (1988) ("Here, the 'narrowing function' was performed by the jury at the guilt phase when it found defendant guilty of three counts of murder under the provision that 'the offender has a specific intent to kill or to inflict great bodily harm upon more than one person' "). It is hard

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[3] Turning to the statements upon which the *Simmons* plurality and concurring opinions relied, JUSTICE SCALIA noted that the prosecutor's comment concerning "'what to do with [petitioner] now that he is in our midst' . . . was not made (as they imply) in the course of an argument about future dangerousness, but was a response to petitioner's mitigating evidence." *Id.*, at 181–182. Similarly, "the prosecutor's comment that the jury's verdict would be an 'act of self-defense' . . . came at the end of admonition of the jury to avoid emotional responses and enter a rational verdict." *Id.*, at 182. As JUSTICE SCALIA indicates, the reference "obviously alluded, neither to defense of the jurors' own persons, nor specifically to defense of persons outside the prison walls, but to defense of all members of society against this individual, wherever he or they might be. . . . [T]he prosecutor did not *invite* the jury to believe that petitioner would be eligible for parole—he did not *mislead* the jury." *Ibid.*

to imagine how, for example, the depravity of mind that such a crime displays will not always have a "tendency" to show future dangerousness. And it is of little comfort that today's opinion technically requires not merely evidence with this tendency, but argument by the prosecutor, *ante*, at 254–255, n. 4. When does a prosecutor *not* argue the evidence, and when will argument regarding depravity not also constitute argument showing dangerousness? Thus, today the Court eviscerates the recognition in the *Simmons*' decisive opinion that "[t]he decision whether or not to inform the jury of the possibility of early release is generally left to the States." 512 U. S., at 176 (O'CONNOR, J., concurring in judgment).

Today's decision allows the Court to meddle further in a State's sentencing proceedings under the guise that the Constitution requires us to do so. I continue to believe, without qualification, that "it is not this Court's role to micromanage state sentencing proceedings." *Shafer* v. *South Carolina*, 532 U. S. 36, 58 (2001) (THOMAS, J., dissenting). As a matter of policy, it may be preferable for a trial court to give such an instruction, but these are "matters that the Constitution leaves to the States." *Ibid.*

For these reasons, I respectfully dissent.

Syllabus

UNITED STATES *v.* ARVIZU

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 00–1519. Argued November 27, 2001—Decided January 15, 2002

Respondent was stopped by Border Patrol Agent Stoddard while driving on an unpaved road in a remote area of southeastern Arizona. A search of his vehicle revealed more than 100 pounds of marijuana, and he was charged with possession with intent to distribute. The Federal District Court denied respondent's motion to suppress, citing a number of facts that gave Stoddard reasonable suspicion to stop the vehicle. The Ninth Circuit reversed. In its view, fact-specific weighing of circumstances or other multifactor tests introduced uncertainty and unpredictability into the Fourth Amendment analysis, making it necessary to clearly delimit the factors that an officer may consider in making stops such as this one. It then held that several factors relied upon by the District Court carried little or no weight in the reasonable-suspicion calculus and that the remaining factors were not enough to render the stop permissible.

Held: Considering the totality of the circumstances and giving due weight to the factual inferences drawn by Stoddard and the District Court Judge, Stoddard had reasonable suspicion to believe that respondent was engaged in illegal activity. Because the "balance between the public interest and the individual's right to personal security," *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878, tilts in favor of a standard less than probable cause in brief investigatory stops of persons or vehicles, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "may be afoot," *United States* v. *Sokolow*, 490 U. S. 1, 7. In making reasonable-suspicion determinations, reviewing courts must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. See, *e. g.*, *United States* v. *Cortez*, 449 U. S. 411, 417–418. This process allows officers to draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available. *Id.*, at 418. The Ninth Circuit's methodology departs sharply from these teachings, and it reached the wrong result in this case. Its evaluation and rejection of certain factors in isolation from each other does not take into account the "totality of the circum-

stances," as this Court's cases have understood that phrase. The court appeared to believe that each of Stoddard's observations that was by itself susceptible to an innocent explanation was entitled to no weight. *Terry* v. *Ohio*, 392 U. S. 1, however, precludes this sort of divide-and-conquer analysis. And the court's view that it was necessary to clearly delimit an officer's consideration of certain factors to reduce troubling uncertainty also runs counter to this Court's cases and underestimates the reasonable-suspicion standard's usefulness in guiding officers in the field. The *de novo* standard for appellate review of reasonable-suspicion determinations has, *inter alia*, a tendency to unify precedent and a capacity to provide law enforcement officers the tools to reach the correct decision beforehand. *Ornelas* v. *United States*, 517 U. S. 690, 691, 697–698. The Ninth Circuit's approach would seriously undermine the "totality of the circumstances" principle governing the existence *vel non* of "reasonable suspicion." Here, it was reasonable for Stoddard to infer from his observations, his vehicle registration check, and his border patrol experience that respondent had set out on a route used by drug smugglers and that he intended to pass through the area during a border patrol shift change; and Stoddard's assessment of the reactions of respondent and his passengers was entitled to some weight. Although each of the factors alone is susceptible to innocent explanation, and some factors are more probative than others, taken together, they sufficed to form a particularized and objective basis for stopping the vehicle. Pp. 273–278.

232 F. 3d 1241, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court. SCALIA, J., filed a concurring opinion, *post*, p. 278.

Austin C. Schlick argued the cause for the United States. With him on the briefs were *Solicitor General Olson*, *Assistant Attorney General Chertoff*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

Victoria A. Brambl argued the cause for respondent. With her on the brief was *Fredric F. Kay*.*

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*Briefs of *amici curiae* urging affirmance were filed for the DKT Liberty Project by *Julia M. Carpenter*; and for the National Association of Criminal Defense Lawyers et al. by *Lawrence S. Lustberg* and *Risa E. Kaufman*.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Ralph Arvizu was stopped by a border patrol agent while driving on an unpaved road in a remote area of southeastern Arizona. A search of his vehicle turned up more than 100 pounds of marijuana. The District Court for the District of Arizona denied respondent's motion to suppress, but the Court of Appeals for the Ninth Circuit reversed. In the course of its opinion, it categorized certain factors relied upon by the District Court as simply out of bounds in deciding whether there was "reasonable suspicion" for the stop. We hold that the Court of Appeals' methodology was contrary to our prior decisions and that it reached the wrong result in this case.

On an afternoon in January 1998, Agent Clinton Stoddard was working at a border patrol checkpoint along U. S. Highway 191 approximately 30 miles north of Douglas, Arizona. App. 22, 24. See Appendix, *infra* (containing a map of the area noting the location of the checkpoint and other points important to this case). Douglas has a population of about 13,000 and is situated on the United States-Mexico border in the southeastern part of the State. Only two highways lead north from Douglas. See App. 157. Highway 191 leads north to Interstate 10, which passes through Tucson and Phoenix. State Highway 80 heads northeast through less populated areas toward New Mexico, skirting south and east of the portion of the Coronado National Forest that lies approximately 20 miles northeast of Douglas.[1]

The checkpoint is located at the intersection of 191 and Rucker Canyon Road, an unpaved east-west road that connects 191 and the Coronado National Forest. When the checkpoint is operational, border patrol agents stop the traf-

[1] Coronado National Forest consists of 12 widely scattered sections of land covering 1,780,000 acres in southeastern Arizona and southwestern New Mexico. The section of the forest near Douglas includes the Chiricahua, Dragoon, and Peloncillo Mountain Ranges.

fic on 191 as part of a coordinated effort to stem the flow of illegal immigration and smuggling across the international border. See *id.*, at 20–21. Agents use roving patrols to apprehend smugglers trying to circumvent the checkpoint by taking the backroads, including those roads through the sparsely populated area between Douglas and the national forest. *Id.*, at 21–22, 26, 80. Magnetic sensors, or "intrusion devices," facilitate agents' efforts in patrolling these areas. See *id.*, at 25. Directionally sensitive, the sensors signal the passage of traffic that would be consistent with smuggling activities. *Ibid.*; Tr. of Oral Arg. 23–24.

Sensors are located along the only other northbound road from Douglas besides Highways 191 and 80: Leslie Canyon Road. Leslie Canyon Road runs roughly parallel to 191, about halfway between 191 and the border of the Coronado National Forest, and ends when it intersects Rucker Canyon Road. It is unpaved beyond the 10-mile stretch leading out of Douglas and is very rarely traveled except for use by local ranchers and forest service personnel. App. 26. Smugglers commonly try to avoid the 191 checkpoint by heading west on Rucker Canyon Road from Leslie Canyon Road and thence to Kuykendall Cutoff Road, a primitive dirt road that leads north approximately 12 miles east of 191. *Id.*, at 29–30. From there, they can gain access to Tucson and Phoenix. *Id.*, at 30.

Around 2:15 p.m., Stoddard received a report via Douglas radio that a Leslie Canyon Road sensor had been triggered. *Id.*, at 24. This was significant to Stoddard for two reasons. First, it suggested to him that a vehicle might be trying to circumvent the checkpoint. *Id.*, at 27. Second, the timing coincided with the point when agents begin heading back to the checkpoint for a shift change, which leaves the area unpatrolled. *Id.*, at 26, 47. Stoddard knew that alien smugglers did extensive scouting and seemed to be most active when agents were en route back to the checkpoint. Another border patrol agent told Stoddard that the same

sensor had gone off several weeks before and that he had apprehended a minivan using the same route and witnessed the occupants throwing bundles of marijuana out the door. *Id.*, at 27.

Stoddard drove eastbound on Rucker Canyon Road to investigate. As he did so, he received another radio report of sensor activity. *Id.*, at 29. It indicated that the vehicle that had triggered the first sensor was heading westbound on Rucker Canyon Road. He continued east, passing Kuykendall Cutoff Road. He saw the dust trail of an approaching vehicle about a half mile away. *Id.*, at 31. Stoddard had not seen any other vehicles and, based on the timing, believed that this was the one that had tripped the sensors. *Id.*, at 31–32. He pulled off to the side of the road at a slight slant so he could get a good look at the oncoming vehicle as it passed by. *Id.*, at 32.

It was a minivan, a type of automobile that Stoddard knew smugglers used. *Id.*, at 33. As it approached, it slowed dramatically, from about 50–55 to 25–30 miles per hour. *Id.*, at 32, 57. He saw five occupants inside. An adult man was driving, an adult woman sat in the front passenger seat, and three children were in the back. *Id.*, at 33–34. The driver appeared stiff and his posture very rigid. He did not look at Stoddard and seemed to be trying to pretend that Stoddard was not there. *Id.*, at 33. Stoddard thought this suspicious because in his experience on patrol most persons look over and see what is going on, and in that area most drivers give border patrol agents a friendly wave. *Id.*, at 59. Stoddard noticed that the knees of the two children sitting in the very back seat were unusually high, as if their feet were propped up on some cargo on the floor. *Id.*, at 34.

At that point, Stoddard decided to get a closer look, so he began to follow the vehicle as it continued westbound on Rucker Canyon Road toward Kuykendall Cutoff Road. *Id.*, at 34–35. Shortly thereafter, all of the children, though

still facing forward, put their hands up at the same time and began to wave at Stoddard in an abnormal pattern. *Id.*, at 35, 61. It looked to Stoddard as if the children were being instructed. Their odd waving continued on and off for about four to five minutes. *Id.*, at 35, 73.

Several hundred feet before the Kuykendall Cutoff Road intersection, the driver signaled that he would turn. *Id.*, at 36. At one point, the driver turned the signal off, but just as he approached the intersection he put it back on and abruptly turned north onto Kuykendall. The turn was significant to Stoddard because it was made at the last place that would have allowed the minivan to avoid the checkpoint. *Id.*, at 37. Also, Kuykendall, though passable by a sedan or van, is rougher than either Rucker Canyon or Leslie Canyon Roads, and the normal traffic is four-wheel-drive vehicles. *Id.*, at 36, 63–64. Stoddard did not recognize the minivan as part of the local traffic agents encounter on patrol, *id.*, at 37, and he did not think it likely that the minivan was going to or coming from a picnic outing. He was not aware of any picnic grounds on Turkey Creek, which could be reached by following Kuykendall Cutoff all the way up. *Id.*, at 54. He knew of picnic grounds and a Boy Scout camp east of the intersection of Rucker Canyon and Leslie Canyon Roads, *id.*, at 31, 53, 54, but the minivan had turned west at that intersection. And he had never seen anyone picnicking or sightseeing near where the first sensor went off. *Id.*, at 53, 75.

Stoddard radioed for a registration check and learned that the minivan was registered to an address in Douglas that was four blocks north of the border in an area notorious for alien and narcotics smuggling. *Id.*, at 37–38, 66–67. After receiving the information, Stoddard decided to make a vehicle stop. *Id.*, at 38. He approached the driver and learned that his name was Ralph Arvizu. Stoddard asked if respondent would mind if he looked inside and searched

the vehicle. *Id.*, at 43. Respondent agreed, and Stoddard discovered marijuana in a black duffel bag under the feet of the two children in the back seat. *Id.*, at 45–46. Another bag containing marijuana was behind the rear seat. *Id.*, at 46. In all, the van contained 128.85 pounds of marijuana, worth an estimated $99,080. Brief for United States 8.

Respondent was charged with possession with intent to distribute marijuana in violation of 21 U. S. C. §841(a)(1) (1994 ed.). He moved to suppress the marijuana, arguing among other things that Stoddard did not have reasonable suspicion to stop the vehicle as required by the Fourth Amendment. After holding a hearing where Stoddard and respondent testified, the District Court for the District of Arizona ruled otherwise. App. to Pet. for Cert. 21a. It pointed to a number of the facts described above and noted particularly that any recreational areas north of Rucker Canyon would have been accessible from Douglas via 191 and another paved road, making it unnecessary to take a 40-to-50-mile trip on dirt roads. *Id.*, at 22a.

The Court of Appeals for the Ninth Circuit reversed. 232 F. 3d 1241 (2000). In its view, fact-specific weighing of circumstances or other multifactor tests introduced "a troubling degree of uncertainty and unpredictability" into the Fourth Amendment analysis. *Id.*, at 1248 (internal quotation marks omitted). It therefore "attempt[ed] . . . to describe and clearly delimit the extent to which certain factors may be considered by law enforcement officers in making stops such as the stop involv[ing]" respondent. *Ibid.* After characterizing the District Court's analysis as relying on a list of 10 factors, the Court of Appeals proceeded to examine each in turn. It held that seven of the factors, including respondent's slowing down, his failure to acknowledge Stoddard, the raised position of the children's knees, and their odd waving carried little or no weight in the reasonable-suspicion calculus. The remaining factors—the

road's use by smugglers, the temporal proximity between respondent's trip and the agents' shift change, and the use of minivans by smugglers—were not enough to render the stop permissible. *Id.*, at 1251. We granted certiorari to review the decision of the Court of Appeals because of its importance to the enforcement of federal drug and immigration laws. 532 U. S. 1065 (2001).

The Fourth Amendment prohibits "unreasonable searches and seizures" by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. *Terry* v. *Ohio*, 392 U. S. 1, 9 (1968); *United States* v. *Cortez*, 449 U. S. 411, 417 (1981). Because the "balance between the public interest and the individual's right to personal security," *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975), tilts in favor of a standard less than probable cause in such cases, the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity "'may be afoot,'" *United States* v. *Sokolow*, 490 U. S. 1, 7 (1989) (quoting *Terry, supra*, at 30). See also *Cortez*, 449 U. S., at 417 ("An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity").

When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. See, *e. g.*, *id.*, at 417–418. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that "might well elude an untrained person." *Id.*, at 418. See also *Ornelas* v. *United States*, 517 U. S. 690, 699 (1996) (reviewing court must give "due weight" to factual inferences drawn by resi-

dent judges and local law enforcement officers). Although an officer's reliance on a mere "'hunch'" is insufficient to justify a stop, *Terry, supra,* at 27, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard, *Sokolow, supra,* at 7.

Our cases have recognized that the concept of reasonable suspicion is somewhat abstract. *Ornelas, supra,* at 696 (principle of reasonable suspicion is not a "'finely-tuned standar[d]'"); *Cortez, supra,* at 417 (the cause "sufficient to authorize police to stop a person" is an "elusive concept"). But we have deliberately avoided reducing it to "'a neat set of legal rules,'" *Ornelas, supra,* at 695–696 (quoting *Illinois* v. *Gates,* 462 U. S. 213, 232 (1983)). In *Sokolow,* for example, we rejected a holding by the Court of Appeals that distinguished between evidence of ongoing criminal behavior and probabilistic evidence because it "create[d] unnecessary difficulty in dealing with one of the relatively simple concepts embodied in the Fourth Amendment." 490 U. S., at 7–8.

We think that the approach taken by the Court of Appeals here departs sharply from the teachings of these cases. The court's evaluation and rejection of seven of the listed factors in isolation from each other does not take into account the "totality of the circumstances," as our cases have understood that phrase. The court appeared to believe that each observation by Stoddard that was by itself readily susceptible to an innocent explanation was entitled to "no weight." See 232 F. 3d, at 1249–1251. *Terry,* however, precludes this sort of divide-and-conquer analysis. The officer in *Terry* observed the petitioner and his companions repeatedly walk back and forth, look into a store window, and confer with one another. Although each of the series of acts was "perhaps innocent in itself," we held that, taken together, they "warranted further investigation." 392 U. S., at 22. See also *Sokolow, supra,* at 9 (holding that factors which by them-

selves were "quite consistent with innocent travel" collectively amounted to reasonable suspicion).

The Court of Appeals' view that it was necessary to "clearly delimit" an officer's consideration of certain factors to reduce "troubling . . . uncertainty," 232 F. 3d, at 1248, also runs counter to our cases and underestimates the usefulness of the reasonable-suspicion standard in guiding officers in the field. In *Ornelas* v. *United States*, we held that the standard for appellate review of reasonable-suspicion determinations should be *de novo*, rather than for "abuse of discretion." 517 U. S., at 691. There, we reasoned that *de novo* review would prevent the affirmance of opposite decisions on identical facts from different judicial districts in the same circuit, which would have been possible under the latter standard, and would allow appellate courts to clarify the legal principles. *Id.*, at 697. Other benefits of the approach, we said, were its tendency to unify precedent and greater capacity to provide law enforcement officers with the tools to reach correct determinations beforehand: Even if in many instances the factual "mosaic" analyzed for a reasonable-suspicion determination would preclude one case from squarely controlling another, "two decisions when viewed together may usefully add to the body of law on the subject." *Id.*, at 697–698.

But the Court of Appeals' approach would go considerably beyond the reasoning of *Ornelas* and seriously undercut the "totality of the circumstances" principle which governs the existence *vel non* of "reasonable suspicion." Take, for example, the court's positions that respondent's deceleration could not be considered because "slowing down after spotting a law enforcement vehicle is an entirely normal response that is in no way indicative of criminal activity" and that his failure to acknowledge Stoddard's presence provided no support because there were "no 'special circumstances' rendering 'innocent avoidance . . . improbable.'" 232 F. 3d, at 1248–1249. We think it quite reasonable that a driver's

slowing down, stiffening of posture, and failure to acknowledge a sighted law enforcement officer might well be unremarkable in one instance (such as a busy San Francisco highway) while quite unusual in another (such as a remote portion of rural southeastern Arizona). Stoddard was entitled to make an assessment of the situation in light of his specialized training and familiarity with the customs of the area's inhabitants. See *Ornelas, supra,* at 699. To the extent that a totality of the circumstances approach may render appellate review less circumscribed by precedent than otherwise, it is the nature of the totality rule.

In another instance, the Court of Appeals chose to dismiss entirely the children's waving on grounds that odd conduct by children was all too common to be probative in a particular case. See 232 F. 3d, at 1249 ("If every odd act engaged in by one's children . . . could contribute to a finding of reasonable suspicion, the vast majority of American parents might be stopped regularly within a block of their homes"). Yet this case did not involve simply any odd act by children. At the suppression hearing, Stoddard testified about the children's waving several times, and the record suggests that he physically demonstrated it as well.[2] The District Court Judge, who saw and heard Stoddard, then characterized the waving as "methodical," "mechanical," "abnormal," and "certainly . . . a fact that is odd and would lead a reasonable officer to wonder why they are doing this." App. to Pet. for Cert. 25a. Though the issue of this case does not turn on the children's idiosyncratic actions, the Court of Appeals should not have casually rejected this factor in light of the District Court's superior access to the evidence and the well-recognized inability of reviewing courts to reconstruct what happened in the courtroom.

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[2] At one point during the hearing, Stoddard testified that "[the children's waving] wasn't in a normal pattern. It looked like they were instructed to do so. They kind of stuck their hands up and began waving to me like this." App. 35.

Having considered the totality of the circumstances and given due weight to the factual inferences drawn by the law enforcement officer and District Court Judge, we hold that Stoddard had reasonable suspicion to believe that respondent was engaged in illegal activity. It was reasonable for Stoddard to infer from his observations, his registration check, and his experience as a border patrol agent that respondent had set out from Douglas along a little-traveled route used by smugglers to avoid the 191 checkpoint. Stoddard's knowledge further supported a commonsense inference that respondent intended to pass through the area at a time when officers would be leaving their backroads patrols to change shifts. The likelihood that respondent and his family were on a picnic outing was diminished by the fact that the minivan had turned away from the known recreational areas accessible to the east on Rucker Canyon Road. Corroborating this inference was the fact that recreational areas farther to the north would have been easier to reach by taking 191, as opposed to the 40-to-50-mile trip on unpaved and primitive roads. The children's elevated knees suggested the existence of concealed cargo in the passenger compartment. Finally, for the reasons we have given, Stoddard's assessment of respondent's reactions upon seeing him and the children's mechanical-like waving, which continued for a full four to five minutes, were entitled to some weight.

Respondent argues that we must rule in his favor because the facts suggested a family in a minivan on a holiday outing. A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct. See *Illinois* v. *Wardlow*, 528 U. S. 119, 125 (2000) (that flight from police is not necessarily indicative of ongoing criminal activity does not establish Fourth Amendment violation). Undoubtedly, each of these factors alone is susceptible of innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for Stoddard's

stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment.

The judgment of the Court of Appeals is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

[Appendix to opinion of the Court follows this page.]

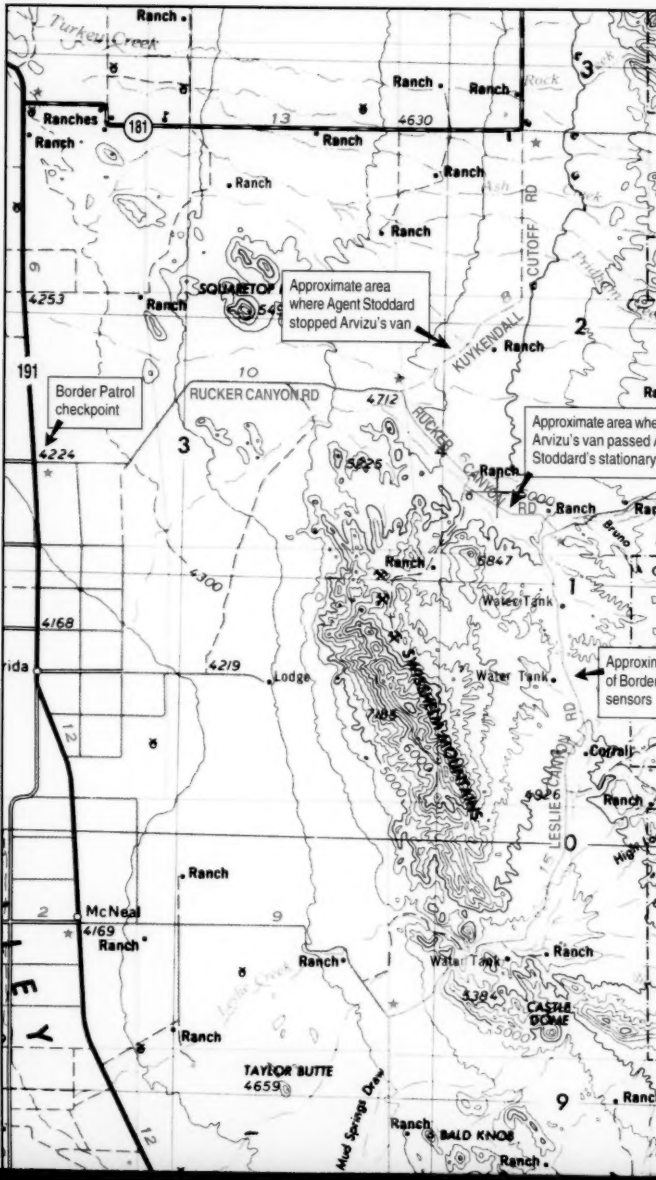
JUSTICE SCALIA, concurring.

I join the opinion of the Court, because I believe it accords with our opinion in *Ornelas* v. *United States*, 517 U. S. 690, 699 (1996), requiring *de novo* review which nonetheless gives "due weight to inferences drawn from [the] facts by resident judges . . . ." As I said in my dissent in *Ornelas*, however, I do not see how deferring to the District Court's factual inferences (as opposed to its findings of fact) is compatible with *de novo* review. *Id.*, at 705.

The Court today says that "due weight" should have been given to the District Court's determinations that the children's waving was "'methodical,' 'mechanical,' 'abnormal,' and 'certainly . . . a fact that is odd and would lead a reasonable officer to wonder why they are doing this.'" *Ante*, at 276. "Methodical," "mechanical," and perhaps even "abnormal" and "odd," are findings of fact that deserve respect. But the inference that this "would lead a reasonable officer to wonder why they are doing this," amounts to the conclusion that their action was suspicious, which I would have thought (if *de novo* review is the standard) is the prerogative of the Court of Appeals. So we have here a peculiar sort of *de novo* review.

I may add that, even holding the Ninth Circuit to no more than the traditional methodology of *de novo* review, its judgment here would have to be reversed.

APPENDIX TO OPINI



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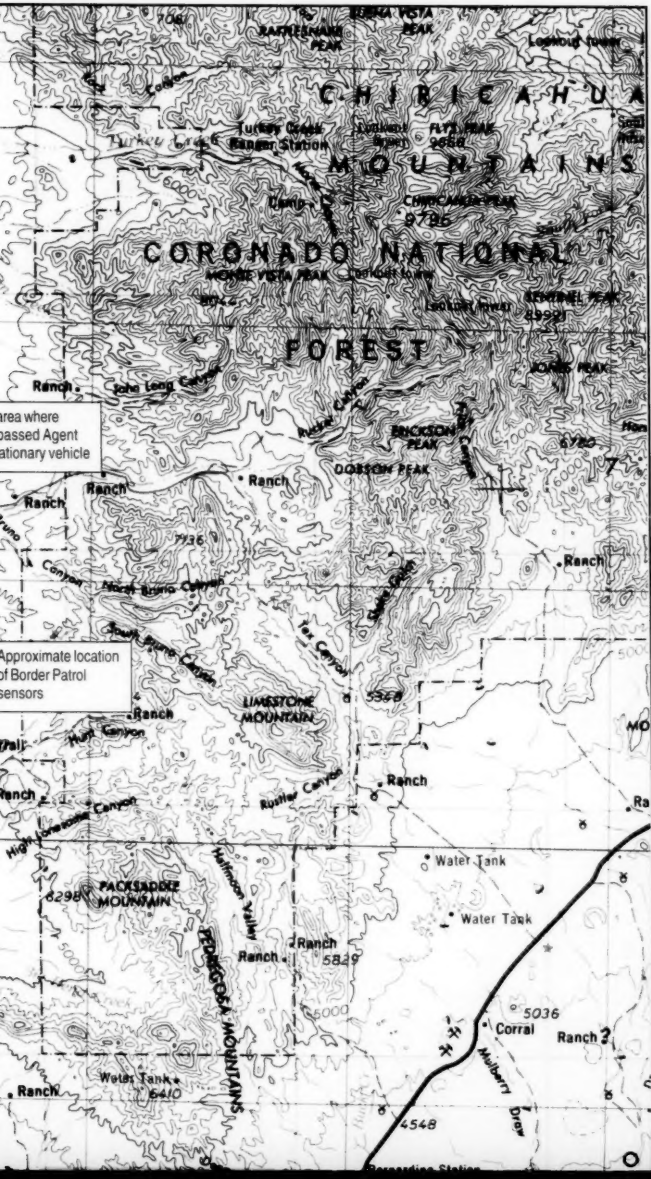
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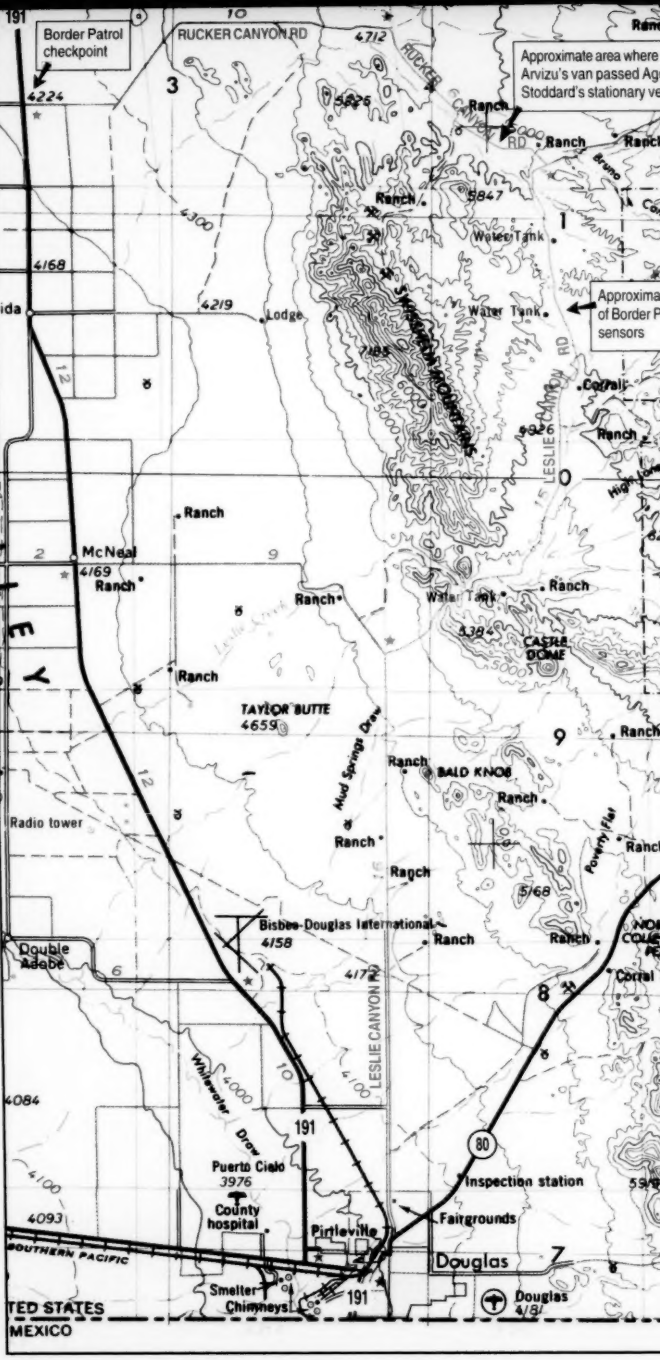

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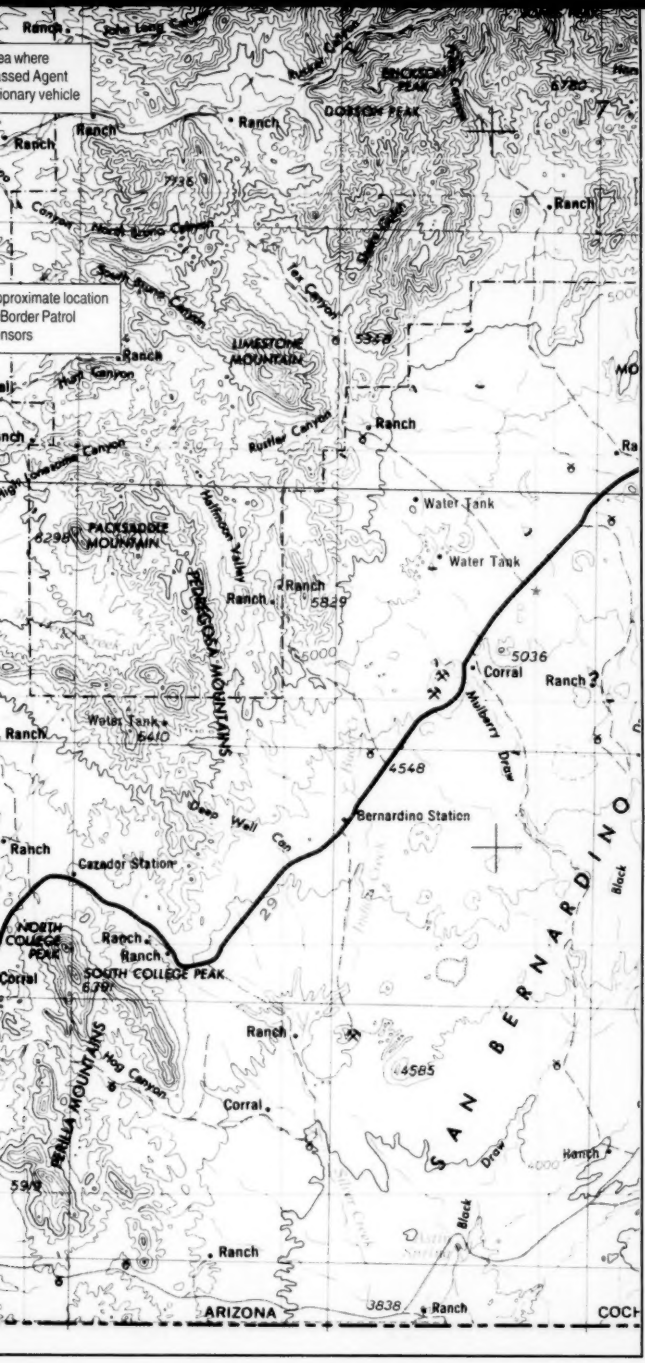
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Syllabus

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* WAFFLE HOUSE, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 99–1823. Argued October 10, 2001—Decided January 15, 2002

Respondent's employees must each sign an agreement requiring employment disputes to be settled by binding arbitration. After Eric Baker suffered a seizure and was fired by respondent, he filed a timely discrimination charge with the Equal Employment Opportunity Commission (EEOC) alleging that his discharge violated Title I of the Americans with Disabilities Act of 1990 (ADA). The EEOC subsequently filed this enforcement suit, to which Baker is not a party, alleging that respondent's employment practices, including Baker's discharge "because of his disability," violated the ADA and that the violation was intentional and done with malice or reckless indifference. The complaint requested injunctive relief to "eradicate the effects of [respondent's] past and present unlawful employment practices"; specific relief designed to make Baker whole, including backpay, reinstatement, and compensatory damages; and punitive damages for malicious and reckless conduct. Respondent petitioned under the Federal Arbitration Act (FAA) to stay the EEOC's suit and compel arbitration, or to dismiss the action, but the District Court denied relief. The Fourth Circuit concluded that the arbitration agreement between Baker and respondent did not foreclose the enforcement action because the EEOC was not a party to the contract, but had independent statutory authority to bring suit in any federal district court where venue was proper. Nevertheless, the court held that the EEOC was limited to injunctive relief and precluded from seeking victim-specific relief because the FAA policy favoring enforcement of private arbitration agreements outweighs the EEOC's right to proceed in federal court when it seeks primarily to vindicate private, rather than public, interests.

Held: An agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific judicial relief, such as backpay, reinstatement, and damages, in an ADA enforcement action. Pp. 285–298.

(a) The ADA directs the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act of 1964 when enforcing the ADA's prohibitions against employment discrimination on the basis of disability. Following the

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1991 amendments to Title VII, the EEOC has authority to bring suit to enjoin an employer from engaging in unlawful employment practices, and to pursue reinstatement, backpay, and compensatory or punitive damages, in both Title VII and ADA actions. Thus, these statutes unambiguously authorize the EEOC to obtain the relief that it seeks here if it can prove its case against respondent. Neither the statutes nor this Court's cases suggest that the existence of an arbitration agreement between private parties materially changes the EEOC's statutory function or the remedies otherwise available. Pp. 285–288.

(b) Despite the FAA policy favoring arbitration agreements, nothing in the FAA authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement. The FAA does not mention enforcement by public agencies; it ensures the enforceability of private agreements to arbitrate, but otherwise does not purport to place any restriction on a nonparty's choice of a judicial forum. Pp. 288–289.

(c) The Fourth Circuit based its decision on its evaluation of the "competing policies" implemented by the ADA and the FAA, rather than on any language in either the statutes or the arbitration agreement between Baker and respondent. If the EEOC could prosecute its claim only with Baker's consent, or if its prayer for relief could be dictated by Baker, the lower court's analysis might be persuasive. But once a charge is filed, the exact opposite is true under the ADA, which clearly makes the EEOC the master of its own case, conferring on it the authority to evaluate the strength of the public interest at stake and to determine whether public resources should be committed to the recovery of victim-specific relief. Moreover, the Court of Appeals' attempt to balance policy goals against the arbitration agreement's clear language is inconsistent with this Court's cases holding that the FAA does not require parties to arbitrate when they have not agreed to do so. *E. g.*, *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 478. Because the EEOC is not a party to the contract and has not agreed to arbitrate its claims, the FAA's proarbitration policy goals do not require the agency to relinquish its statutory authority to pursue victim-specific relief, regardless of the forum that the employer and employee have chosen to resolve their disputes. Pp. 290–296.

(d) Although an employee's conduct may effectively limit the relief the EEOC can obtain in court if, for example, the employee fails to mitigate damages or accepts a monetary settlement, see, *e. g.*, *Ford Motor Co.* v. *EEOC*, 458 U. S. 219, 231–232, Baker has not sought arbitration, nor is there any indication that he has entered into settlement negotiations with respondent. The fact that ordinary principles of res

judicata, mootness, or mitigation may apply to EEOC claims does not mean the EEOC's claim is merely derivative. This Court has recognized several situations in which the EEOC does not stand in the employee's shoes, see, *e. g.*, *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U. S. 355, 368, and, in this context, the statute specifically grants the EEOC exclusive authority over the choice of forum and the prayer for relief once a charge has been filed. Pp. 296–298.

193 F. 3d 805, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined, *post*, p. 298.

Paul D. Clement argued the cause for petitioner. With him on the briefs were *Solicitor General Olson*, *Acting Solicitor General Underwood*, *Acting Assistant Attorney General Yeomans*, *James A. Feldman*, *Gwendolyn Young Reams*, *Philip B. Sklover*, *Lorraine C. Davis*, and *Robert J. Gregory*.

David L. Gordon argued the cause for respondent. With him on the brief were *D. Gregory Valenza*, *Stephen F. Fisher*, and *Thomas C. Goldstein*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Missouri et al. by *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, *James R. Layton*, State Solicitor, and *Alana M. Barragan-Scott*, Deputy Solicitor, and by the Attorneys General for their respective jurisdictions as follows: *Bruce M. Botelho* of Alaska, *Janet Napolitano* of Arizona, *Mark Pryor* of Arkansas, *Bill Lockyer* of California, *Ken Salazar* of Colorado, *Robert A. Butterworth* of Florida, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Mike Hatch* of Minnesota, *Mike McGrath* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John J. Farmer, Jr.*, of New Jersey, *Patricia A. Madrid* of New Mexico, *Eliot Spitzer* of New York, *Betty D. Montgomery* of Ohio, *Sheldon Whitehouse* of Rhode Island, *Mark Barnett* of South Dakota, *Mark Shurtleff* of Utah, *William H. Sorrell* of Vermont, *Darrell V. McGraw, Jr.*, of West Virginia, and *Herbert D. Soll* of the Northern Mariana Islands; for the Maryland Commission on Human Relations et al. by *Lee D. Hoshall* and *Elizabeth Colette*; for AARP by *Thomas*

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief, such as backpay, reinstatement, and damages, in an enforcement action alleging that the employer has violated Title I of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U. S. C. § 12101 *et seq.* (1994 ed. and Supp. V).

I

In his application for employment with respondent, Eric Baker agreed that "any dispute or claim" concerning his employment would be "settled by binding arbitration."[1] As a

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Briefs of *amici curiae* urging affirmance were filed for Associated Industries of Massachusetts et al. by *Michael E. Malamut;* for the Council for Employment Law Equity by *Walter Dellinger, Samuel Estreicher,* and *Mark A. de Bernardo;* and for the Equal Employment Advisory Council by *Ann Elizabeth Reesman* and *Rae T. Vann.*

[1] The agreement states:

"The parties agree that any dispute or claim concerning Applicant's employment with Waffle House, Inc., or any subsidiary or Franchisee of Waffle House, Inc., or the terms, conditions or benefits of such employment, including whether such dispute or claim is arbitrable, will be settled by binding arbitration. The arbitration proceedings shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration is made. A

condition of employment, all prospective Waffle House employees are required to sign an application containing a similar mandatory arbitration agreement. See App. 56. Baker began working as a grill operator at one of respondent's restaurants on August 10, 1994. Sixteen days later he suffered a seizure at work and soon thereafter was discharged. *Id.*, at 43–44. Baker did not initiate arbitration proceedings, nor has he in the seven years since his termination, but he did file a timely charge of discrimination with the EEOC alleging that his discharge violated the ADA.

After an investigation and an unsuccessful attempt to conciliate, the EEOC filed an enforcement action against respondent in the Federal District Court for the District of South Carolina,[2] pursuant to § 107(a) of the ADA, 42 U. S. C. § 12117(a) (1994 ed.), and § 102 of the Civil Rights Act of 1991, as added, 105 Stat. 1072, 42 U. S. C. § 1981a (1994 ed.). Baker is not a party to the case. The EEOC's complaint alleged that respondent engaged in employment practices that violated the ADA, including its discharge of Baker "because of his disability," and that its violation was intentional, and "done with malice or with reckless indifference to [his] federally protected rights." The complaint requested the court to grant injunctive relief to "eradicate the effects of [respondent's] past and present unlawful employment prac-

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decision and award of the arbitrator made under the said rules shall be exclusive, final and binding on both parties, their heirs, executors, administrators, successors and assigns. The costs and expenses of the arbitration shall be borne evenly by the parties." App. 59.

[2] Because no evidence of the employment practices alleged in the complaint has yet been presented, we of course express no opinion on the merits of the EEOC's case. We note, on the one hand, that the state human rights commission also investigated Baker's claim and found no basis for suit. On the other hand, the EEOC chooses to file suit in response to only a small number of the many charges received each year, see n. 7, *infra*. In keeping with normal appellate practice in cases arising at the pleading stage, we assume, *arguendo*, that the EEOC's case is meritorious.

tices," to order specific relief designed to make Baker whole, including backpay, reinstatement, and compensatory damages, and to award punitive damages for malicious and reckless conduct. App. 38–40.

Respondent filed a petition under the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.*, to stay the EEOC's suit and compel arbitration, or to dismiss the action. Based on a factual determination that Baker's actual employment contract had not included the arbitration provision, the District Court denied the motion. The Court of Appeals granted an interlocutory appeal and held that a valid, enforceable arbitration agreement between Baker and respondent did exist. 193 F. 3d 805, 808 (CA4 1999). The court then proceeded to consider "what effect, if any, the binding arbitration agreement between Baker and Waffle House has on the EEOC, which filed this action in its own name both in the public interest and on behalf of Baker." *Id.*, at 809. After reviewing the relevant statutes and the language of the contract, the court concluded that the agreement did not foreclose the enforcement action because the EEOC was not a party to the contract, and it has independent statutory authority to bring suit in any federal district court where venue is proper. *Id.*, at 809–812. Nevertheless, the court held that the EEOC was precluded from seeking victim-specific relief in court because the policy goals expressed in the FAA required giving some effect to Baker's arbitration agreement. The majority explained:

> "When the EEOC seeks 'make-whole' relief for a charging party, the federal policy favoring enforcement of private arbitration agreements outweighs the EEOC's right to proceed in federal court because in that circumstance, the EEOC's public interest is minimal, as the EEOC seeks primarily to vindicate private, rather than public, interests. On the other hand, when the EEOC is pursuing large-scale injunctive relief, the balance tips in favor of EEOC enforcement efforts in federal court

because the public interest dominates the EEOC's action." *Id.*, at 812.[3]

Therefore, according to the Court of Appeals, when an employee has signed a mandatory arbitration agreement, the EEOC's remedies in an enforcement action are limited to injunctive relief.

Several Courts of Appeals have considered this issue and reached conflicting conclusions. Compare *EEOC* v. *Frank's Nursery & Crafts, Inc.*, 177 F. 3d 448 (CA6 1999) (employee's agreement to arbitrate does not affect the EEOC's independent statutory authority to pursue an enforcement action for injunctive relief, backpay, and damages in federal court), with *EEOC* v. *Kidder, Peabody & Co.*, 156 F. 3d 298 (CA2 1998) (allowing the EEOC to pursue injunctive relief in federal court, but precluding monetary relief); *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Nixon*, 210 F. 3d 814 (CA8), cert. denied, 531 U. S. 958 (2000) (same). We granted the EEOC's petition for certiorari to resolve this conflict, 532 U. S. 941 (2001), and now reverse.

II

Congress has directed the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act of 1964 when it is enforcing the ADA's prohibitions against employment discrimination on the basis of disability. 42 U. S. C. § 12117(a) (1994 ed.).[4] Accordingly, the provisions of Title VII defining

[3] One member of the panel dissented because he agreed with the District Court that, as a matter of fact, the arbitration clause was not included in Baker's actual contract of employment. 193 F. 3d, at 813.

[4] Section 12117(a) provides:

"The powers, remedies, and procedures set forth in sections 2000e–4, 2000e–5, 2000e–6, 2000e–8, and 2000e–9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment."

the EEOC's authority provide the starting point for our analysis.

When Title VII was enacted in 1964, it authorized private actions by individual employees and public actions by the Attorney General in cases involving a "pattern or practice" of discrimination. 42 U. S. C. § 2000e–6(a) (1994 ed.). The EEOC, however, merely had the authority to investigate and, if possible, to conciliate charges of discrimination. See *General Telephone Co. of Northwest* v. *EEOC*, 446 U. S. 318, 325 (1980). In 1972, Congress amended Title VII to authorize the EEOC to bring its own enforcement actions; indeed, we have observed that the 1972 amendments created a system in which the EEOC was intended "to bear the primary burden of litigation," *id.*, at 326. Those amendments authorize the courts to enjoin employers from engaging in unlawful employment practices, and to order appropriate affirmative action, which may include reinstatement, with or without backpay.[5] Moreover, the amendments specify the judicial districts in which such actions may be brought.[6] They do not mention arbitration proceedings.

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[5] "(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

"(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." 42 U. S. C. § 2000e–5(g)(1) (1994 ed.).

[6] Section 2000e–5(f)(3) provides:

"Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction

In 1991, Congress again amended Title VII to allow the recovery of compensatory and punitive damages by a "complaining party." 42 U. S. C. § 1981a(a)(1) (1994 ed.). The term includes both private plaintiffs and the EEOC, § 1981a(d)(1)(A), and the amendments apply to ADA claims as well, §§ 1981a(a)(2), (d)(1)(B). As a complaining party, the EEOC may bring suit to enjoin an employer from engaging in unlawful employment practices, and to pursue reinstatement, backpay, and compensatory or punitive damages. Thus, these statutes unambiguously authorize the EEOC to obtain the relief that it seeks in its complaint if it can prove its case against respondent.

Prior to the 1991 amendments, we recognized the difference between the EEOC's enforcement role and an individual employee's private cause of action in *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U. S. 355 (1977), and *General Telephone Co. of Northwest* v. *EEOC*, 446 U. S. 318 (1980). *Occidental* presented the question whether EEOC enforcement actions are subject to the same statutes of limitations that govern individuals' claims. After engaging in an unsuccessful conciliation process, the EEOC filed suit in Federal District Court, on behalf of a female employee, alleging sex discrimination. The court granted the defendant's motion for summary judgment on the ground that the EEOC's claim was time barred; the EEOC filed suit after California's 1-year statute of limitations had run. We reversed because "under the procedural structure created by the 1972

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of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought."

amendments, the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties," 432 U. S., at 368. To hold otherwise would have undermined the agency's independent statutory responsibility to investigate and conciliate claims by subjecting the EEOC to inconsistent limitations periods.

In *General Telephone*, the EEOC sought to bring a discrimination claim on behalf of all female employees at General Telephone's facilities in four States, without being certified as the class representative under Federal Rule of Civil Procedure 23. 446 U. S., at 321–322. Relying on the plain language of Title VII and the legislative intent behind the 1972 amendments, we held that the EEOC was not required to comply with Rule 23 because it "need look no further than § 706 for its authority to bring suit in its own name for the purpose, among others, of securing relief for a group of aggrieved individuals." *Id.*, at 324. In light of the provisions granting the EEOC exclusive jurisdiction over the claim for 180 days after the employee files a charge, we concluded that "the EEOC is not merely a proxy for the victims of discrimination and that [its] enforcement suits should not be considered representative actions subject to Rule 23." *Id.*, at 326.

Against the backdrop of our decisions in *Occidental* and *General Telephone*, Congress expanded the remedies available in EEOC enforcement actions in 1991 to include compensatory and punitive damages. There is no language in the statutes or in either of these cases suggesting that the existence of an arbitration agreement between private parties materially changes the EEOC's statutory function or the remedies that are otherwise available.

III

The FAA was enacted in 1925, 43 Stat. 883, and then reenacted and codified in 1947 as Title 9 of the United States Code. It has not been amended since the enactment of Title

VII in 1964. As we have explained, its "purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 24 (1991). The FAA broadly provides that a written provision in "a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2. Employment contracts, except for those covering workers engaged in transportation, are covered by the FAA. *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 (2001).

The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement. See 9 U. S. C. §§3 and 4. We have read these provisions to "manifest a 'liberal federal policy favoring arbitration agreements.'" *Gilmer*, 500 U. S., at 25 (quoting *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983)). Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration. See *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52, 57 (1995) ("[T]he FAA's proarbitration policy does not operate without regard to the wishes of the contracting parties"). For nothing in the statute authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement. The FAA does not mention enforcement by public agencies; it ensures the enforceability of private agreements to arbitrate, but otherwise does not purport to place any restriction on a nonparty's choice of a judicial forum.

IV

The Court of Appeals based its decision on its evaluation of the "competing policies" implemented by the ADA and the FAA, rather than on any language in the text of either the statutes or the arbitration agreement between Baker and respondent. 193 F. 3d, at 812. It recognized that the EEOC never agreed to arbitrate its statutory claim, *id.*, at 811 ("We must also recognize that in this case the EEOC is not a party to any arbitration agreement"), and that the EEOC has "independent statutory authority" to vindicate the public interest, but opined that permitting the EEOC to prosecute Baker's claim in court "would significantly trample" the strong federal policy favoring arbitration because Baker had agreed to submit his claim to arbitration. *Id.*, at 812. To effectuate this policy, the court distinguished between injunctive and victim-specific relief, and held that the EEOC is barred from obtaining the latter because any public interest served when the EEOC pursues "make whole" relief is outweighed by the policy goals favoring arbitration. Only when the EEOC seeks broad injunctive relief, in the Court of Appeals' view, does the public interest overcome the goals underpinning the FAA.[7]

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[7] This framework assumes the federal policy favoring arbitration will be undermined unless the EEOC's remedies are limited. The court failed to consider, however, that some of the benefits of arbitration are already built into the EEOC's statutory duties. Unlike individual employees, the EEOC cannot pursue a claim in court without first engaging in a conciliation process. 42 U. S. C. §2000e–5(b) (1994 ed.). Thus, before the EEOC ever filed suit in this case, it attempted to reach a settlement with respondent.

The court also neglected to take into account that the EEOC files suit in a small fraction of the charges employees file. For example, in fiscal year 2000, the EEOC received 79,896 charges of employment discrimination. Although the EEOC found reasonable cause in 8,248 charges, it only filed 291 lawsuits. Equal Employment Opportunity Commission, Enforcement Statistics and Litigation (as visited Nov. 18, 2001), http://www.eeoc.gov/stats/enforcement.html. In contrast, 21,032 employment discrimination lawsuits were filed in 2000. See Administrative Office,

If it were true that the EEOC could prosecute its claim only with Baker's consent, or if its prayer for relief could be dictated by Baker, the court's analysis might be persuasive. But once a charge is filed, the exact opposite is true under the statute—the EEOC is in command of the process. The EEOC has exclusive jurisdiction over the claim for 180 days. During that time, the employee must obtain a right-to-sue letter from the agency before prosecuting the claim. If, however, the EEOC files suit on its own, the employee has no independent cause of action, although the employee may intervene in the EEOC's suit. 42 U. S. C. §2000e–5(f)(1) (1994 ed.). In fact, the EEOC takes the position that it may pursue a claim on the employee's behalf even after the employee has disavowed any desire to seek relief. Brief for Petitioner 20. The statute clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake. Absent textual support for a contrary view, it is the public agency's province—not that of the court—to determine

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Judicial Business of the United States Courts 2000, Table C–2A (Sept. 30, 2000). These numbers suggest that the EEOC files fewer than two percent of all antidiscrimination claims in federal court. Indeed, even among the cases where it finds reasonable cause, the EEOC files suit in fewer than five percent of those cases. Surely permitting the EEOC access to victim-specific relief in cases where the employee has agreed to binding arbitration, but has not yet brought a claim in arbitration, will have a negligible effect on the federal policy favoring arbitration.

JUSTICE THOMAS notes that our interpretation of Title VII and the FAA "should not depend on how many cases the EEOC chooses to prosecute in any particular year." See *post*, at 314, n. 14 (dissenting opinion). And yet, the dissent predicts our holding will "reduce that arbitration agreement to all but a nullity," *post*, at 309, "discourag[e] the use of arbitration agreements," *post*, at 310, and "discourage employers from entering into settlement agreements," *post*, at 312. These claims are highly implausible given the EEOC's litigation practice over the past 20 years. When speculating about the impact this decision might have on the behavior of employees and employers, we think it is worth recognizing that the EEOC files suit in less than one percent of the charges filed each year.

whether public resources should be committed to the recovery of victim-specific relief. And if the agency makes that determination, the statutory text unambiguously authorizes it to proceed in a judicial forum.

Respondent and the dissent contend that Title VII supports the Court of Appeals' bar against victim-specific relief, because the statute limits the EEOC's recovery to "appropriate" relief as determined by a court. See Brief for Respondent 19, and n. 8; *post*, at 301–303 (THOMAS, J., dissenting). They rely on § 706(g)(1), which provides that, after a finding of liability, "the court may enjoin the respondent from engaging in such unlawful employment practice, and order *such affirmative action as may be appropriate*, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . *or any other equitable relief as the court deems appropriate.*" 42 U. S. C. § 2000e–5(g)(1) (1994 ed.) (emphasis added). They claim this provision limits the remedies available and directs courts, not the EEOC, to determine what relief is appropriate.

The proposed reading is flawed for two reasons. First, under the plain language of the statute the term "appropriate" refers to only a subcategory of claims for equitable relief, not damages. The provision authorizing compensatory and punitive damages is in a separate section of the statute, § 1981a(a)(1), and is not limited by this language. The dissent responds by pointing to the phrase "may recover" in § 1981a(a)(1), and arguing that this too provides authority for prohibiting victim-specific relief. See *post*, at 303, n. 7. But this contention only highlights the second error in the proposed reading. If "appropriate" and "may recover" can be read to support respondent's position, then any discretionary language would constitute authorization for judge-made, *per se* rules. This is not the natural reading of the text. These terms obviously refer to the trial judge's discretion in a particular case to order reinstatement and award damages in an amount warranted by the facts of that

case. They do not permit a court to announce a categorical rule precluding an expressly authorized form of relief as inappropriate in all cases in which the employee has signed an arbitration agreement.[8]

The Court of Appeals wisely did not adopt respondent's reading of § 706(g). Instead, it simply sought to balance the policy goals of the FAA against the clear language of Title VII and the agreement. While this may be a more coherent approach, it is inconsistent with our recent arbitration cases. The FAA directs courts to place arbitration agreements on equal footing with other contracts, but it "does not require parties to arbitrate when they have not agreed to do so." *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 478 (1989).[9] See

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[8] JUSTICE THOMAS implicitly recognizes this distinction by qualifying his description of the courts' role as determining appropriate relief "in any given case," or "in a particular case." See *post*, at 301, 303. But the Court of Appeals' holding was not so limited. 193 F. 3d 805, 812 (CA4 1999) (holding that the EEOC "may not pursue relief in court . . . specific to individuals who have waived their right to a judicial forum").

[9] In *Volt*, the parties to a construction contract agreed to arbitrate all disputes relating to the contract and specified that California law would apply. When one party sought to compel arbitration, the other invoked a California statute that authorizes a court to stay arbitration pending resolution of related litigation with third parties not bound by the agreement when inconsistent rulings are possible. We concluded that the FAA did not pre-empt the California statute because "the FAA does not confer a right to compel arbitration of any dispute at any time; it confers only the right to obtain an order directing that 'arbitration proceed *in the manner provided for in [the parties'] agreement*.'" 489 U. S., at 474–475 (quoting 9 U. S. C. § 4). Similarly, the FAA enables respondent to compel Baker to arbitrate his claim, but it does not expand the range of claims subject to arbitration beyond what is provided for in the agreement.

Our decision in *Mastrobuono* v. *Shearson Lehman Hutton, Inc.*, 514 U. S. 52 (1995), is not inconsistent with this position. In *Mastrobuono*, we reiterated that clear contractual language governs our interpretation of arbitration agreements, but because the choice-of-law provision in that case was ambiguous, we read the agreement to favor arbitration under the FAA rules. *Id.*, at 62. While we distinguished *Volt* on the ground

also *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 404, n. 12 (1967) ("[T]he purpose of Congress in 1925 was to make arbitration agreements as enforceable as other contracts, but not more so"). Because the FAA is "at bottom a policy guaranteeing the enforcement of private contractual arrangements," *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 625 (1985), we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement. *Id.*, at 626. While ambiguities in the language of the agreement should be resolved in favor of arbitration, *Volt*, 489 U. S., at 476, we do not override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated. "Arbitration under the [FAA] is a matter of consent, not coercion." *Id.*, at 479. Here there is no ambiguity. No one asserts that the EEOC is a party to the contract, or that it agreed to arbitrate its claims. It goes without saying that a contract cannot bind a nonparty. Accordingly, the proarbitration policy goals of the FAA do not require the agency to relinquish its statutory authority if it has not agreed to do so.

Even if the policy goals underlying the FAA did necessitate some limit on the EEOC's statutory authority, the line drawn by the Court of Appeals between injunctive and victim-specific relief creates an uncomfortable fit with its avowed purpose of preserving the EEOC's public function while favoring arbitration. For that purpose, the category of victim-specific relief is both overinclusive and underinclusive. For example, it is overinclusive because while

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that we were reviewing a federal court's construction of the contract, 514 U. S., at 60, n. 4, regardless of the standard of review, in this case the Court of Appeals recognized that the EEOC was not bound by the agreement. When that much is clear, *Volt* and *Mastrobuono* both direct courts to respect the terms of the agreement without regard to the federal policy favoring arbitration.

punitive damages benefit the individual employee, they also serve an obvious public function in deterring future violations. See *Newport* v. *Fact Concerts, Inc.*, 453 U. S. 247, 266–270 (1981) ("Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor . . . , and to deter him and others from similar extreme conduct"); Restatement (Second) of Torts § 908 (1977). Punitive damages may often have a greater impact on the behavior of other employers than the threat of an injunction, yet the EEOC is precluded from seeking this form of relief under the Court of Appeals' compromise scheme. And, it is underinclusive because injunctive relief, although seemingly not "victim-specific," can be seen as more closely tied to the employees' injury than to any public interest. See *Occidental*, 432 U. S., at 383 (REHNQUIST, J., dissenting) ("While injunctive relief may appear more 'broad based,' it nonetheless is redress for individuals").

The compromise solution reached by the Court of Appeals turns what is effectively a forum selection clause into a waiver of a nonparty's statutory remedies. But if the federal policy favoring arbitration trumps the plain language of Title VII and the contract, the EEOC should be barred from pursuing any claim outside the arbitral forum. If not, then the statutory language is clear; the EEOC has the authority to pursue victim-specific relief regardless of the forum that the employer and employee have chosen to resolve their disputes.[10] Rather than attempt to split the difference, we are

[10] We have held that federal statutory claims may be the subject of arbitration agreements that are enforceable pursuant to the FAA because the agreement only determines the choice of forum. "In these cases we recognized that '[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.' [*Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985)]." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 26 (1991). To the extent the Court of Appeals construed an employee's agreement to submit his claims to an arbitral forum as a waiver of the substantive statutory

persuaded that, pursuant to Title VII and the ADA, whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, even when it pursues entirely victim-specific relief. To hold otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the EEOC's statutory function.[11]

V

It is true, as respondent and its *amici* have argued, that Baker's conduct may have the effect of limiting the relief that the EEOC may obtain in court. If, for example, he had failed to mitigate his damages, or had accepted a monetary settlement, any recovery by the EEOC would be limited accordingly. See, *e. g.*, *Ford Motor Co.* v. *EEOC*, 458 U. S. 219, 231–232 (1982) (Title VII claimant "forfeits his right to back-

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prerogative of the EEOC to enforce those claims for whatever relief and in whatever forum the EEOC sees fit, the court obscured this crucial distinction and ran afoul of our precedent.

[11] If injunctive relief were the only remedy available, an employee who signed an arbitration agreement would have little incentive to file a charge with the EEOC. As a greater percentage of the work force becomes subject to arbitration agreements as a condition of employment, see Voluntary Arbitration in Worker Disputes Endorsed by 2 Groups, Wall Street Journal, June 20, 1997, p. B2 (reporting that the American Arbitration Association estimates "more than 3.5 million employees are covered" by arbitration agreements designating it to administer arbitration proceedings), the pool of charges from which the EEOC can choose cases that best vindicate the public interest would likely get smaller and become distorted. We have generally been reluctant to approve rules that may jeopardize the EEOC's ability to investigate and select cases from a broad sample of claims. Cf. *EEOC* v. *Shell Oil Co.*, 466 U. S. 54, 69 (1984) ("[I]t is crucial that the Commission's ability to investigate charges of systemic discrimination not be impaired"); *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U. S. 355, 368 (1977).

pay if he refuses a job substantially equivalent to the one he was denied"); *EEOC* v. *Goodyear Aerospace Corp.*, 813 F. 2d 1539, 1542 (CA9 1987) (employee's settlement "rendered her personal claims moot"); *EEOC* v. *U. S. Steel Corp.*, 921 F. 2d 489, 495 (CA3 1990) (individuals who litigated their own claims were precluded by res judicata from obtaining individual relief in a subsequent EEOC action based on the same claims). As we have noted, it "goes without saying that the courts can and should preclude double recovery by an individual." *General Telephone*, 446 U. S., at 333.

But no question concerning the validity of his claim or the character of the relief that could be appropriately awarded in either a judicial or an arbitral forum is presented by this record. Baker has not sought arbitration of his claim, nor is there any indication that he has entered into settlement negotiations with respondent. It is an open question whether a settlement or arbitration judgment would affect the validity of the EEOC's claim or the character of relief the EEOC may seek. The only issue before this Court is whether the fact that Baker has signed a mandatory arbitration agreement limits the remedies available to the EEOC. The text of the relevant statutes provides a clear answer to that question. They do not authorize the courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by law that it shall seek in any given case.

Moreover, it simply does not follow from the cases holding that the employee's conduct may affect the EEOC's recovery that the EEOC's claim is merely derivative. We have recognized several situations in which the EEOC does not stand in the employee's shoes. See *Occidental*, 432 U. S., at 368 (EEOC does not have to comply with state statutes of limitations); *General Telephone*, 446 U. S., at 326 (EEOC does not have to satisfy Rule 23 requirements); *Gilmer*, 500 U. S., at 32 (EEOC is not precluded from seeking classwide and equi-

table relief in court on behalf of an employee who signed an arbitration agreement). And, in this context, the statute specifically grants the EEOC exclusive authority over the choice of forum and the prayer for relief once a charge has been filed. The fact that ordinary principles of res judicata, mootness, or mitigation may apply to EEOC claims does not contradict these decisions, nor does it render the EEOC a proxy for the employee.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

The Court holds today that the Equal Employment Opportunity Commission (EEOC or Commission) may obtain victim-specific remedies in court on behalf of an employee who had agreed to arbitrate discrimination claims against his employer. This decision conflicts with both the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.*, and the basic principle that the EEOC must take a victim of discrimination as it finds him. Absent explicit statutory authorization to the contrary, I cannot agree that the EEOC may do on behalf of an employee that which an employee has agreed not to do for himself. Accordingly, I would affirm the judgment of the Court of Appeals.

I

Before starting work as a grill operator for respondent Waffle House, Inc., Eric Scott Baker filled out and signed an employment application. This application included an arbitration clause providing that "any dispute or claim concerning Applicant's employment with Waffle House, Inc., or any subsidiary or Franchisee of Waffle House, Inc., or the terms,

conditions or benefits of such employment . . . will be settled by binding arbitration." App. 59.

The Court does not dispute that the arbitration agreement between Waffle House and Baker falls comfortably within the scope of the FAA, see *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 (2001), which provides that "[a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable." 9 U. S. C. §2. Neither does the Court contest that claims arising under federal employment discrimination laws, such as Baker's claim that Waffle House discharged him in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U. S. C. §12101 *et seq.* (1994 ed. and Supp. V), may be subject to compulsory arbitration. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 23 (1991) (holding that a claim arising under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. §621 *et seq.* (1994 ed.), may be subject to compulsory arbitration).[1] The Court therefore does not dispute that

[1] Admittedly, this case involves a claim under the ADA while *Gilmer* addressed compulsory arbitration in the context of the ADEA. Nevertheless, I see no reason why an employee should not be required to abide by an agreement to arbitrate an ADA claim. In assessing whether Congress has precluded the enforcement of an arbitration agreement with respect to a particular statutory claim, this Court has held that a party should be held to an arbitration agreement "unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985). Here, the text of the ADA does not suggest that Congress intended for ADA claims to fall outside the purview of the FAA. Indeed, the ADA expressly encourages the use of arbitration and other forms of alternative dispute resolution, rather than litigation, to resolve claims under the statute: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this [Act]." 42 U. S. C. §12212 (1994 ed.).

Baker, by signing an arbitration agreement, waived his ability either to bring an ADA claim against Waffle House in court or, consequently, to obtain relief for himself in that forum.

The EEOC, in its complaint, sought to obtain the victim-specific relief for Baker that he could not seek for himself, asking a court to make Baker whole by providing reinstatement with backpay and compensatory damages and to pay Baker punitive damages.[2] App. 39–40. In its responses to interrogatories and directives to produce filed the same day as its complaint, the EEOC stated unambiguously: "All amounts recovered from Defendant Employer in this litigation will be received directly by Mr. Baker based on his charge of discrimination against Defendant Employer." *Id.*, at 52. The EEOC also admitted that it was "bring[ing] this action on behalf of Eric Scott Baker."[3] *Id.*, at 51.

By allowing the EEOC to obtain victim-specific remedies for Baker, the Court therefore concludes that the EEOC may do "on behalf of . . . Baker" that which he cannot do for himself. The Court's conclusion rests upon the following premise advanced by the EEOC: An arbitration agreement between an employer and an employee may not limit the remedies that the Commission may obtain in court because

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[2] The EEOC, in its prayer for relief, also requested that the court enjoin Waffle House from engaging in any discriminatory employment practice and asked the court to order Waffle House to institute policies, practices, and programs which would provide equal employment opportunities for qualified individuals with disabilities, and which would eradicate the effect of its past and present unlawful employment practices. App. 39. The Court of Appeals concluded that Baker's arbitration agreement did not preclude the EEOC from seeking such broad-based relief, and Waffle House has not appealed that ruling. See 193 F. 3d 805, 813, n. 3 (CA4 1999).

[3] Although the EEOC's complaint alleged that Waffle House engaged in "unlawful employment *practices*," in violation of § 102(a) of the ADA, 42 U. S. C. § 12112(a) (1994 ed.), it mentioned no instances of discriminatory conduct on the part of Waffle House other than its discharge of Baker. App. 38 (emphasis added).

Title VII "grants the EEOC the right to obtain all statutory remedies in any action it brings."[4] Brief for Petitioner 17. The EEOC contends that "the statute in clear terms authorizes [it] to obtain all of the listed forms of relief," referring to those types of relief set forth in 42 U. S. C. § 2000e–5(g)(1) (1994 ed.) (including injunctive relief and reinstatement with backpay) as well as the forms of relief listed in § 1981a(a)(1) (compensatory and punitive damages). Brief for Petitioner 17–18. Endorsing the EEOC's position, the Court concludes that "these statutes unambiguously authorize the EEOC to obtain the relief that it seeks in its complaint if it can prove its case against respondent." *Ante*, at 287.

The Court's position, however, is inconsistent with the relevant statutory provision. For while the EEOC has the statutory right to *bring* suit, see § 2000e–5(f)(1), it has no statutory entitlement to *obtain* a particular remedy. Rather, the plain language of § 2000e–5(g)(1) makes clear that it is a *court's* role to decide whether to "enjoin the respondent . . . , and order such affirmative action *as may be appropriate*, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . or any other equitable relief *as the court deems appropriate*." (Emphasis added.) Whether a particular remedy is "appropriate" in any given case is a question for a court and not for the EEOC.[5] See *Albemarle Paper Co.*

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[4] Title I of the ADA expressly incorporates "[t]he powers, remedies, and procedures set forth in [Title VII]." 42 U. S. C. § 12117(a). That includes the procedures applicable to enforcement actions as well as the equitable relief available under § 2000e–5(g).

[5] The EEOC also points out that Title VII gives the EEOC, and not an individual victim of discrimination, the choice of forum when the EEOC files an enforcement action. See § 2000e–5(f)(3). Since the statute gives the victim no say in the matter, the EEOC argues that an employee, by signing an arbitration agreement, should not be able to effectively negate *ex ante* the EEOC's statutory authority to choose the forum in which it brings suit. Brief for Petitioner 21–23. The Court, wisely, does not rely heavily on this argument since nothing in the Court of Appeals' decision

v. *Moody*, 422 U. S. 405, 415–416 (1975) ("The [Title VII] scheme implicitly recognizes that there may be cases calling for one remedy but not another, and . . . these choices are, of course, left in the first instance to the district courts"); *Selgas* v. *American Airlines, Inc.*, 104 F. 3d 9, 13, n. 2 (CA1 1997) ("It is clear that in a Title VII case, it is the court which has discretion to fashion relief comprised of the equitable remedies it sees as appropriate, and not the parties which may determine which equitable remedies are available").

Had Congress wished to give the EEOC the authority to determine whether a particular remedy is appropriate under § 2000e–5, it clearly knew how to draft language to that effect. See § 2000e–16(b) (providing that the EEOC shall have the authority to enforce § 2000e–16(a)'s prohibition of employment discrimination within federal agencies "through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section"). But Congress specifically declined to grant the EEOC such authority when it empowered the Commission to bring lawsuits against private employers. Both the original House version and the original Senate version of the Equal Employment Opportunity Act of 1972 would have granted the EEOC powers similar to those possessed by the National Labor Relations Board to adjudicate a complaint and implement a remedy. See H. R. 1746, 92d Cong., 1st Sess., § 706(h) (1971), and S. 2515, 92d Cong., 1st Sess., § 4(h) (1971), reprinted in Legislative History of the Equal Employment Opportunity Act of 1972, pp. 7–8, 164–165. These bills were amended, however, once they reached the floor of both Houses of Congress to replace such "cease-and-desist" authority with the power only to prosecute an

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prevents the EEOC from choosing to file suit in any appropriate judicial district set forth in § 2000e–5(f)(3). Rather, the Court of Appeals' holding only limits the *remedies* that the EEOC may obtain when it decides to institute a judicial action. See 193 F. 3d, at 806–807.

action in court. See 117 Cong. Rec. 32088–32111 (1971); 118 Cong. Rec. 3965–3979 (1972).

The statutory scheme enacted by Congress thus entitles neither the EEOC nor an employee, upon filing a lawsuit, to obtain a particular remedy by establishing that an employer discriminated in violation of the law.[6] In both cases, 42 U. S. C. § 2000e–5(g)(1) governs, and that provision unambiguously requires a *court* to determine what relief is "appropriate" in a particular case.[7]

II

Because Congress has not given the EEOC the authority to usurp the traditional role of courts to determine what constitutes "appropriate" relief in a given case, it is necessary to examine whether it would be "appropriate" to allow the EEOC to obtain victim-specific relief for Baker here, notwithstanding the fact that Baker, by signing an arbitration

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[6] The Court, in fact, implicitly admits as much. Contradicting its earlier assertion that the "statutes unambiguously authorize the EEOC to obtain the relief *that it seeks* in its complaint if it can prove its case against respondent," *ante*, at 287 (emphasis added), the Court later concludes that the statutory scheme gives the trial judge "discretion in a particular case to order reinstatement and award damages in an amount warranted by the facts of that case." *Ante*, at 292–293.

[7] Similarly, the EEOC's authority to obtain legal remedies is also no greater than that of an employee acting on his own behalf. Title 42 U. S. C. § 1981a(a)(2), which was enacted as part of the Civil Rights Act of 1991, Pub. L. 102–166, 105 Stat. 1072, provides that the EEOC or an employee "*may recover* compensatory and punitive damages" in addition to the forms of relief authorized by § 2000e–5(g)(1). (Emphasis added.) Nothing in § 1981a(a), however, alters the fundamental proposition that it is for the judiciary to determine what relief (of all the relief that plaintiffs "may recover" under the statute) the particular plaintiff before the court *is entitled to*. The statutory language does not purport to grant the EEOC or an employee the absolute right to obtain damages in every case of proven discrimination, despite the operation of such legal doctrines as time bar, accord and satisfaction, or (as in this case) binding agreement to arbitrate.

agreement, has waived his ability to seek such relief on his own behalf in a judicial forum. For two reasons, I conclude it is not "appropriate" to allow the EEOC to do on behalf of Baker that which Baker is precluded from doing for himself.

A

To begin with, when the EEOC litigates to obtain relief on behalf of a particular employee, the Commission must take that individual as it finds him. Whether the EEOC or an employee files a particular lawsuit, the employee is the ultimate beneficiary of victim-specific relief. The relevance of the employee's circumstances therefore does not change simply because the EEOC, rather than the employee himself, is litigating the case, and a court must consider these circumstances in fashioning an "appropriate" remedy.[8]

As a result, the EEOC's ability to obtain relief is often limited by the actions of an employee on whose behalf the Commission may wish to bring a lawsuit. If an employee signs an agreement to waive or settle discrimination claims against an employer, for example, the EEOC may not recover victim-specific relief on that employee's behalf. See, *e. g.*, *EEOC* v. *Cosmair, Inc.*, 821 F. 2d 1085, 1091 (CA5 1987); *EEOC* v. *Goodyear Aerospace Corp.*, 813 F. 2d 1539, 1543 (CA9 1987); see also EEOC: Guidance on Waivers Under the ADA and Other Civil Rights Laws, EEOC Compliance Manual (BNA) N:2345, N:2347 (Apr. 10, 1997) (hereinafter EEOC Compliance Manual) (recognizing that a valid waiver or set-

[8] I agree with the Court that, in order to determine whether a particular remedy is "appropriate," it is necessary to examine the specific facts of the case at hand. See *ante*, at 292–293. For this reason, the statutory scheme does not permit us to announce a categorical rule barring lower courts from *ever* awarding a form of relief expressly authorized by the statute. When the same set of facts arises in different cases, however, such cases should be adjudicated in a consistent manner. Therefore, this Court surely may specify particular circumstances under which it would be inappropriate for trial courts to award certain types of relief, such as victim-specific remedies.

tlement agreement precludes the EEOC from recovering victim-specific relief for an employee). In addition, an employee who fails to mitigate his damages limits his ability to obtain relief, whether he files his own lawsuit or the EEOC files an action on his behalf. See *Ford Motor Co.* v. *EEOC*, 458 U. S. 219, 231–232 (1982). An employee's unilateral attempt to pursue his own discrimination claim may also limit the EEOC's ability to obtain victim-specific relief for that employee. If a court rejects the merits of a claim in a private lawsuit brought by an employee, for example, res judicata bars the EEOC from recovering victim-specific relief on behalf of that employee in a later action. See, *e. g.*, *EEOC* v. *Harris Chernin, Inc.*, 10 F. 3d 1286, 1291 (CA7 1993).

In all of the aforementioned situations, the same general principle applies: To the extent that the EEOC is seeking victim-specific relief in court for a particular employee, it is able to obtain no more relief for that employee than the employee could recover for himself by bringing his own lawsuit. The EEOC, therefore, should not be able to obtain victim-specific relief for Baker in court through its own lawsuit here when Baker waived his right to seek relief for himself in a judicial forum by signing an arbitration agreement.

The Court concludes that the EEOC's claim is not "merely derivative" of an employee's claim and argues that "[w]e have recognized several situations in which the EEOC does not stand in the employee's shoes." *Ante*, at 297. The Court's opinion, however, attacks a straw man because this case does not turn on whether the EEOC's "claim" is wholly derivative of an employee's "claim." Like the Court of Appeals below, I do not question the EEOC's ability to seek declaratory and broad-based injunctive relief in a case where a particular employee, such as Baker, would not be able to pursue such relief in court. Rather, the dispute here turns on whether the EEOC's ability *to obtain victim-specific relief* is dependent upon the victim's ability to obtain such relief for himself.

The Court claims that three cases support its argument that the EEOC's claim is not "merely derivative" of an employee's claim. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S., at 24; *General Telephone Co. of Northwest* v. *EEOC*, 446 U. S. 318, 325 (1980); *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U. S. 355, 368 (1977). Once the actual nature of the dispute is properly understood, however, it is apparent that these cases do not support the Court's position, for none of them suggests that the EEOC should be allowed to recover *victim-specific relief* on behalf of an employee who has waived his ability to obtain such relief for himself in court by signing a valid arbitration agreement.

In *Gilmer*, for example, this Court addressed whether arbitration procedures are inadequate in discrimination cases because they do not allow for "broad equitable relief and class actions." 500 U. S., at 32. Rejecting this argument, the Court noted that valid arbitration agreements "will not preclude the EEOC from bringing actions seeking class-wide and equitable relief." *Ibid.* Conspicuously absent from the Court's opinion, however, was any suggestion that the EEOC could obtain *victim-specific relief* on behalf of an employee who had signed a valid arbitration agreement. Cf. *ibid.*

Similarly, in *General Telephone*, this Court held only that lawsuits filed by the EEOC should not be considered representative actions under Federal Rule of Civil Procedure 23. In reaching this conclusion, the Court noted that "the EEOC is not merely a proxy for the victims of discrimination." 446 U. S., at 326. To be sure, I agree that to the extent the EEOC seeks broad-based declaratory and equitable relief in court, the Commission undoubtedly acts both as a representative of a specific employee and to "vindicate the public interest in preventing employment discrimination." *Ibid.* But neither this dual function nor anything in *General Telephone* detracts from the proposition that when the EEOC seeks to secure *victim-specific relief* in court, it may obtain

no more relief for an individual than the individual could obtain for himself.

Even the EEOC recognizes the dual nature of its role.[9] See EEOC Compliance Manual N:2346 (citing *General Telephone*, *supra*, at 326). In its compliance manual, the EEOC states that "every charge filed with the EEOC carries two potential claims for relief: the charging party's claim for individual relief, and the EEOC's claim to 'vindicate the public interest in preventing employment discrimination.'" EEOC Compliance Manual N:2346. It is for this reason that "a private agreement can eliminate an individual's right to personal recovery, [but] it cannot interfere with EEOC's right to enforce . . . the ADA . . . by seeking relief that will benefit the public and any victims of an employer's unlawful practices who have not validly waived their claims." *Id.*, at N:2347.[10]

In the final case cited by the Court, *Occidental Life Ins. Co.* v. *EEOC*, this Court held that state statutes of limita-

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[9] The EEOC has consistently recognized that the Commission represents individual employees when it files an action in court. In this case, for instance, the EEOC stated in its answers to interrogatories that it brought this action "on behalf of Eric Scott Baker." See Part I, *supra*. Moreover, the EEOC has maintained in numerous cases that its attorneys have an attorney-client relationship with charging parties and their communications with charging parties are therefore privileged. See, *e. g.*, *EEOC* v. *Johnson & Higgins Inc.*, 78 FEP Cases 1127 (SDNY 1998); *EEOC* v. *McDonnell Douglas Corp.*, 948 F. Supp. 54 (ED Mo. 1996).

[10] This Court has recognized that victim-specific remedies also serve the public goals of antidiscrimination statutes. See, *e. g.*, *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. 352, 357–358 (1995). Nevertheless, when the EEOC is seeking such remedies, it is only serving the public interest to the extent that an employee seeking the same relief for himself through litigation or arbitration would also be serving the public interest. It is when the EEOC is seeking broader relief that its unique role in vindicating the public interest comes to the fore. The Commission's motivation to secure such relief is likely to be greater than that of an individual employee, who may be primarily concerned with securing relief only for himself.

tions do not apply to lawsuits brought by the EEOC, because "[u]nlike the typical litigant against whom a statute of limitations might appropriately run, the EEOC is required by law to refrain from commencing a civil action until it has discharged its administrative duties." 432 U. S., at 368. The Court also noted that the 1-year statute of limitations at issue in that case "could under some circumstances directly conflict with the timetable for administrative action expressly established in the 1972 Act." *Id.*, at 368–369. Precluding the EEOC from seeking victim-specific remedies in court on behalf of an employee who has signed an arbitration agreement, however, would in no way impede the Commission from discharging its administrative duties nor would it directly conflict with any provision of the statute. In fact, such a result is entirely consistent with the federal policy underlying the Court's decision in *Occidental:* that employment discrimination claims should be resolved quickly and out of court. See *id.*, at 368.

B

Not only would it be "inappropriate" for a court to allow the EEOC to obtain victim-specific relief on behalf of Baker, to do so in this case would contravene the "liberal federal policy favoring arbitration agreements" embodied in the FAA. See *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983).

Under the terms of the FAA, Waffle House's arbitration agreement with Baker is valid and enforceable. See Part I, *supra.* The Court reasons, however, that the FAA is not implicated in this case because the EEOC was not a party to the arbitration agreement and "[i]t goes without saying that a contract cannot bind a nonparty." *Ante*, at 294. The Court's analysis entirely misses the point. The relevant question here is not whether the EEOC should be bound by Baker's agreement to arbitrate. Rather, it is whether a court should give effect to the arbitration agreement be-

tween Waffle House and Baker or whether it should instead allow the EEOC to reduce that arbitration agreement to all but a nullity. I believe that the FAA compels the former course.[11]

By allowing the EEOC to pursue victim-specific relief on behalf of Baker under these circumstances, the Court eviscerates Baker's arbitration agreement with Waffle House and liberates Baker from the consequences of his agreement. Waffle House gains nothing and, if anything, will be worse off in cases where the EEOC brings an enforcement action should it continue to utilize arbitration agreements in the future. This is because it will face the prospect of defending itself in two different forums against two different parties seeking precisely the same relief. It could face the EEOC in court and the employee in an arbitral forum.

The Court does not decide here whether an arbitral judgment would "affect the validity of the EEOC's claim or the character of relief the EEOC may seek" in court.[12] *Ante*, at 297. Given the reasoning in the Court's opinion, however, the proverbial handwriting is on the wall. If the EEOC indeed is "the master of its own case," *ante*, at 291, I do not see how an employee's independent decision to pursue arbitral proceedings could affect the validity of the "EEOC's claim"

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[11] The Court also reasons that "the FAA enables respondent to compel Baker to arbitrate his claim, but it does not expand the range of claims subject to arbitration beyond what is provided for in the agreement." *Ante*, at 293, n. 9. The Court does not explain, however, how the EEOC's ADA claim on Baker's behalf differs in any meaningful respect from the ADA claim that Baker would have been compelled to submit to arbitration.

[12] In the vast majority of cases, an individual employee's arbitral proceeding will be resolved before a parallel court action brought by the EEOC. See Maltby, Private Justice: Employment Arbitration and Civil Rights, 30 Colum. Human Rights L. Rev. 29, 55 (1998) (reporting that in arbitration the average employment discrimination case is resolved in under nine months while the average employment discrimination case filed in federal district court is not resolved for almost two years).

in court. Should this Court in a later case determine that an unfavorable arbitral judgment against an employee precludes the EEOC from seeking similar relief for that employee in court, then the Court's jurisprudence will stand for the following proposition: The EEOC may seek relief for an employee who has signed an arbitration agreement unless that employee decides that he would rather abide by his agreement and arbitrate his claim. Reconciling such a result with the FAA, however, would seem to be an impossible task and would make a mockery of the rationale underlying the Court's holding here: that the EEOC is "the master of its own case." *Ante*, at 291.

Assuming that the Court means what it says, an arbitral judgment will *not* preclude the EEOC's claim for victim-specific relief from going forward, and courts will have to adjust damages awards to avoid double recovery. See *ante*, at 297. If an employee, for instance, is able to recover $20,000 through arbitration and a court later concludes in an action brought by the EEOC that the employee is actually entitled to $100,000 in damages, one assumes that a court would only award the EEOC an additional $80,000 to give to the employee. Suppose, however, that the situation is reversed: An arbitrator awards an employee $100,000, but a court later determines that the employee is only entitled to $20,000 in damages. Will the court be required to order the employee to return $80,000 to his employer? I seriously doubt it.

The Court's decision thus places those employers utilizing arbitration agreements at a serious disadvantage. Their employees will be allowed two bites at the apple—one in arbitration and one in litigation conducted by the EEOC—and will be able to benefit from the more favorable of the two rulings. This result, however, discourages the use of arbitration agreements and is thus completely inconsistent with the policies underlying the FAA.

C

While the Court explicitly decides today only "whether the fact that Baker has signed a mandatory arbitration agreement limits the remedies available to the EEOC," *ibid.*, its opinion sets this Court on a path that has no logical or principled stopping point. For example, if "[t]he statute clearly makes the EEOC the master of its own case," *ante*, at 291, and the filing of a charge puts the Commission "in command of the process," *ibid.*, then it is likely after this decision that an employee's decision to enter into a settlement agreement with his employer no longer will preclude the EEOC from obtaining relief for that employee in court.

While the Court suggests that ordinary principles of mootness "may apply to EEOC claims," *ante*, at 298, this observation, given the reasoning in the Court's opinion, seems largely beside the point. It should go without saying that mootness principles apply to EEOC claims. For instance, if the EEOC settles claims with an employer, the Commission obviously cannot continue to pursue those same claims in court. An employee's settlement agreement with an employer, however, does not "moot" an action brought by the EEOC nor does it preclude the EEOC from seeking broad-based relief. Rather, a settlement may only limit the EEOC's ability to obtain victim-specific relief for the employee signing the settlement agreement. See, *e. g.*, *Goodyear Aerospace Corp.*, 813 F. 2d, at 1541–1544.

The real question addressed by the Court's decision today is whether an employee can enter into an agreement with an employer that limits the relief the EEOC may seek in court on that employee's behalf. And if, in the Court's view, an employee cannot compromise the EEOC's ability to obtain particular remedies by signing an arbitration agreement, then I do not see how an employee may be permitted to do the exact same thing by signing a settlement agreement. See *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 511 (1974)

(noting that one purpose of the FAA is to place arbitration agreements "'upon the same footing as other contracts'" (citation omitted)). The Court's reasoning, for example, forecloses the argument that it would be inappropriate under 42 U. S. C. § 2000e–5(g)(1) for a court to award victim-specific relief in any case where an employee had already settled his claim. If the statutory provision, according to the Court, does not "permit a court to announce a categorical rule precluding an expressly authorized form of relief as inappropriate in all cases in which the employee has signed an arbitration agreement," then it surely does not "constitute authorization for [a] judge-made, *per se* rul[e]" barring the EEOC from obtaining victim-specific remedies on behalf of an employee who has signed a valid settlement agreement. *Ante*, at 292, 293.

Unfortunately, it is therefore likely that under the logic of the Court's opinion the EEOC *now will be able* to seek victim-specific relief in court on behalf of employees who have already settled their claims. Such a result, however, would contradict this Court's suggestion in *Gilmer* that employment discrimination disputes "can be settled . . . without any EEOC involvement." 500 U. S., at 28. More importantly, it would discourage employers from entering into settlement agreements and thus frustrate Congress' desire to expedite relief for victims of discrimination, see *Ford Motor Co.* v. *EEOC*, 458 U. S., at 221; *Occidental Life*, 432 U. S., at 364–365, and to resolve employment discrimination disputes out of court. See 42 U. S. C. § 12212 (encouraging alternative means of dispute resolution, including settlement negotiations, to avoid litigation under the ADA).

III

Rather than allowing the EEOC to undermine a valid and enforceable arbitration agreement between an employer and an employee in the manner sanctioned by the Court today, I would choose a different path. As this Court has stated,

courts are "not at liberty to pick and choose among congressional enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Pittsburgh & Lake Erie R. Co.* v. *Railway Labor Executives' Assn.*, 491 U. S. 490, 510 (1989). In this case, I think that the EEOC's statutory authority to enforce the ADA can be easily reconciled with the FAA.

Congress has not indicated that the ADA's enforcement scheme should be interpreted in a manner that undermines the FAA. Rather, in two separate places, Congress has specifically encouraged the use of arbitration to resolve disputes under the ADA. First, in the ADA itself, Congress stated: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and *arbitration, is encouraged to resolve disputes arising under this chapter.*" 42 U. S. C. § 12212 (emphasis added). Second, Congress used virtually identical language to encourage the use of arbitration to resolve disputes under the ADA in the Civil Rights Act of 1991. See Pub. L. 102–166, § 118, 105 Stat. 1081.[13]

The EEOC contends that these provisions do not apply to this dispute because the Commission has not signed an arbitration agreement with Waffle House and the provisions encourage arbitration "only when the parties have consented to arbitration." Reply Brief for Petitioner 17. Remarkably, the EEOC at the same time questions whether it even has the statutory authority to take this step. See Brief

[13] This provision states: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title." Among "the Acts or provisions of Federal law" amended by the Civil Rights Act of 1991 was the ADA. See Pub. L. 102–166, § 118, 105 Stat. 1081.

for Petitioner 22, n. 7. As a result, the EEOC's view seems to be that Congress has encouraged the use of arbitration to resolve disputes under the ADA only in situations where the EEOC does not wish to bring an enforcement action in court. This limiting principle, however, is nowhere to be found in § 12212. The use of arbitration to resolve all disputes under the ADA is clearly "authorized by law." See Part I, *supra*. Consequently, I see no indication that Congress intended to grant the EEOC authority to enforce the ADA in a manner that undermines valid and enforceable arbitration agreements.[14]

In the last 20 years, this Court has expanded the reach and scope of the FAA, holding, for instance, that the statute applies even to state-law claims in state court and pre-empts all contrary state statutes. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265 (1995); *Southland Corp.* v. *Keating*, 465 U. S. 1 (1984). I have not always agreed with this Court's jurisprudence in this area, see, *e. g.*, *Allied-Bruce*, *supra*, at 285–297 (THOMAS, J., dissenting), but it seems to me that what's good for the goose is good for the gander. The Court should not impose the FAA upon States in the absence of any indication that Congress intended such a result, see *Southland*, *supra*, at 25–30 (O'CONNOR, J., dissenting), yet refuse to interpret a *federal* statute in a manner

[14] I do not see the relevance of the Court's suggestion that its decision will only "have a negligible effect on the federal policy favoring arbitration" because the EEOC brings relatively few lawsuits. *Ante*, at 291, n. 7. In my view, either the EEOC has been authorized by statute to undermine valid and enforceable arbitration agreements, such as the one at issue in this case, or one should read the Commission's enforcement authority and the FAA in a harmonious manner. This Court's jurisprudence and the proper interpretation of the relevant statutes should not depend on how many cases the EEOC chooses to prosecute in any particular year. I simply see no statutory basis for the Court's implication that the EEOC has the authority to undermine valid and enforceable arbitration agreements so long as the Commission only opts to interfere with a relatively limited number of agreements.

compatible with the FAA, especially when Congress has expressly encouraged that claims under that federal statute be resolved through arbitration.

Given the utter lack of statutory support for the Court's holding, I can only conclude that its decision today is rooted in some notion that employment discrimination claims should be treated differently from other claims in the context of arbitration. I had thought, however, that this Court had decisively repudiated that principle in *Gilmer*. See 500 U. S., at 27–28 (holding that arbitration agreements can be enforced without contravening the "important social policies" furthered by the ADEA).

For all of these reasons, I respectfully dissent.

Syllabus

THOMAS ET AL. *v.* CHICAGO PARK DISTRICT

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 00–1249. Argued December 3, 2001—Decided January 15, 2002

Respondent Chicago Park District adopted an ordinance requiring individuals to obtain a permit before conducting large-scale events in public parks. The ordinance provides that the Park District may deny a permit on any of 13 specified grounds, must process applications within 28 days, and must explain its reasons for a denial. An unsuccessful applicant may appeal, first, to the Park District's general superintendent and then to state court. Petitioners, dissatisfied that the Park District has denied some, though not all, of their applications for permits to hold rallies advocating the legalization of marijuana, filed a 42 U. S. C. § 1983 suit, alleging, *inter alia*, that the ordinance is unconstitutional on its face. The District Court granted the Park District summary judgment, and the Seventh Circuit affirmed.

Held:

1. A content-neutral permit scheme regulating uses (including speech uses) of a public forum need not contain the procedural safeguards described in *Freedman* v. *Maryland*, 380 U. S. 51. *Freedman* is inapposite because, unlike the motion picture censorship scheme in that case, the Park District's ordinance is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum. None of the grounds for denying a permit has anything to do with the content of speech. Indeed, the ordinance is not directed at communicative activity as such, but to all activity in a public park. And its object is not to exclude particular communication, but to coordinate multiple uses of limited space; assure preservation of park facilities; prevent dangerous, unlawful, or impermissible uses; and assure financial accountability for damage caused by an event. Pp. 320–323.

2. A content-neutral time, place, and manner regulation can be applied in such a manner as to stifle free expression. It thus must contain adequate standards to guide an official's decision and render that decision subject to effective judicial review. See *Niemotko* v. *Maryland*, 340 U. S. 268, 271. The Park District's ordinance meets this test. That the ordinance describes grounds on which the Park District "may" deny a permit does not mean that it allows the Park District to waive requirements for some favored speakers. Such a waiver would be unconstitutional, but this abuse must be dealt with if and when a pattern

of unlawful favoritism appears, rather than by insisting upon a rigid, no-waiver application of the permit requirements. Pp. 323–325.

3. Because the Park District's ordinance is not subject to *Freedman*'s procedural requirements, this Court does not reach the question whether the requirement of prompt judicial review means a prompt judicial determination or the prompt commencement of judicial proceedings. Pp. 325–326.

227 F. 3d 921, affirmed.

SCALIA, J., delivered the opinion for a unanimous Court.

Richard L. Wilson argued the cause for petitioners. With him on the briefs were *Wayne B. Giampietro* and *Michael J. Merrick.*

David A. Strauss argued the cause for respondent. With him on the brief was *Steven A. Weiss.*

James A. Feldman argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Olson, Acting Assistant Attorney General Schiffer, Deputy Solicitor General Kneedler, Stephanie R. Marcus, William G. Myers III,* and *Randolph J. Myers.**

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether a municipal park ordinance requiring individuals to obtain a permit before conducting large-scale events must, consistent with the First Amendment, contain the procedural safeguards described in *Freedman* v. *Maryland,* 380 U. S. 51 (1965).

**Bonnie I. Robin-Vergeer* and *Alan B. Morrison* filed a brief for Public Citizen, Inc., as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the City of New York by *Michael D. Hess,* Corporation Counsel, *Leonard J. Koerner,* and *Elizabeth I. Freedman;* for the International City-County Management Association et al. by *Richard Ruda* and *Charles A. Rothfeld;* for the International Municipal Lawyers Association by *Henry W. Underhill, Jr.;* and for Morality in Media, Inc., et al. by *Robin S. Whitehead* and *Bruce A. Taylor.*

I

Respondent, the Chicago Park District (Park District), is responsible for operating public parks and other public property in Chicago. See Ill. Comp. Stat., ch. 70, § 1505/7.01 (2001). Pursuant to its authority to "establish by ordinance all needful rules and regulations for the government and protection of parks . . . and other property under its jurisdiction," § 1505/7.02, the Park District adopted an ordinance that requires a person to obtain a permit in order to "conduct a public assembly, parade, picnic, or other event involving more than fifty individuals," or engage in an activity such as "creat[ing] or emit[ting] any Amplified Sound." Chicago Park Dist. Code, ch. VII, §§ C.3.a(1), C.3.a(6). The ordinance provides that "[a]pplications for permits shall be processed in order of receipt," § C.5.a, and the Park District must decide whether to grant or deny an application within 14 days unless, by written notice to the applicant, it extends the period an additional 14 days, § C.5.c. Applications can be denied on any of 13 specified grounds. § C.5.e.[1] If the Park

[1] Section C.5.e of the ordinance provides in relevant part:

"To the extent permitted by law, the Park District may deny an application for permit if the applicant or the person on whose behalf the application for permit was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior permits issued to or on behalf of the applicant. The Park District may also deny an application for permit on any of the following grounds:

"(1) the application for permit (including any required attachments and submissions) is not fully completed and executed;

"(2) the applicant has not tendered the required application fee with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, or security deposit within the times prescribed by the General Superintendent;

"(3) the application for permit contains a material falsehood or misrepresentation;

"(4) the applicant is legally incompetent to contract or to sue and be sued;

"(5) the applicant or the person on whose behalf the application for permit was made has on prior occasions damaged Park District

District denies an application, it must clearly set forth in writing the grounds for denial and, where feasible, must propose measures to cure defects in the application. §§ C.5.d, C.5.e. When the basis for denial is prior receipt of a competing application for the same time and place, the Park District must suggest alternative times or places. § C.5.e. An unsuccessful applicant has seven days to file a written appeal to the General Superintendent of the Park District, who must act on the appeal within seven days. § C.6.a. If the General Superintendent affirms a permit denial, the applicant may seek judicial review in state court by common-law certiorari. See *Norton* v. *Nicholson*, 187 Ill. App. 3d 1046, 1057–1058, 543 N. E. 2d 1053, 1059 (1989).

Petitioners have applied to the Park District on several occasions for permits to hold rallies advocating the legal-

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property and has not paid in full for such damage, or has other outstanding and unpaid debts to the Park District;

"(6) a fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular park or part hereof;

"(7) the use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the Park District and previously scheduled for the same time and place;

"(8) the proposed use or activity is prohibited by or inconsistent with the classifications and uses of the park or part thereof designated pursuant to this chapter, Section C.1., above;

"(9) the use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, or other users of the park, of Park District Employees or of the public;

"(10) the applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations of the Park District concerning the sale or offering for sale of any goods or services;

"(11) the use or activity intended by the applicant is prohibited by law, by this Code and ordinances of the Park District, or by the regulations of the General Superintendent . . . ."

ization of marijuana. The Park District has granted some permits and denied others. Not satisfied, petitioners filed an action pursuant to 42 U. S. C. § 1983 in the United States District Court for the Northern District of Illinois, alleging, *inter alia*, that the Park District's ordinance is unconstitutional on its face. The District Court granted summary judgment in favor of the Park District, and the United States Court of Appeals for the Seventh Circuit affirmed. 227 F. 3d 921 (2000). We granted certiorari. 532 U. S. 1051 (2001).

II

The First Amendment's guarantee of "the freedom of speech, or of the press" prohibits a wide assortment of government restraints upon expression, but the core abuse against which it was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the "evils" of the printing press in 16th- and 17-century England. The Printing Act of 1662 had "prescribed what could be printed, who could print, and who could sell." Mayton, Toward a Theory of First Amendment Process: Injunctions of Speech, Subsequent Punishment, and the Costs of the Prior Restraint Doctrine, 67 Cornell L. Rev. 245, 248 (1982). It punished the publication of any book or pamphlet without a license and required that all works be submitted for approval to a government official, who wielded broad authority to suppress works that he found to be "'heretical, seditious, schismatical, or offensive.'" F. Siebert, Freedom of the Press in England, 1476–1776, p. 240 (1952). The English licensing system expired at the end of the 17th century, but the memory of its abuses was still vivid enough in colonial times that Blackstone warned against the "restrictive power" of such a "licenser"—an administrative official who enjoyed unconfined authority to pass judgment on the content of speech. 4 W. Blackstone, Commentaries on the Laws of England 152 (1769).

In *Freedman* v. *Maryland*, 380 U. S. 51 (1965), we confronted a state law that enacted a strikingly similar system of prior restraint for motion pictures. It required that every motion picture film be submitted to a Board of Censors before the film was shown anywhere in the State. The board enjoyed authority to reject films that it considered "'obscene'" or that "'tend[ed], in the judgment of the Board, to debase or corrupt morals or incite to crimes,'" characteristics defined by the statute in broad terms. *Id.*, at 52, n. 2. The statute punished the exhibition of a film not submitted to the board for advance approval, even where the film would have received a license had it been properly submitted. It was no defense that the content of the film was protected by the First Amendment.

We recognized in *Freedman* that a scheme conditioning expression on a licensing body's prior approval of content "presents peculiar dangers to constitutionally protected speech." *Id.*, at 57. "[T]he censor's business is to censor," *ibid.*, and a licensing body likely will overestimate the dangers of controversial speech when determining, without regard to the film's actual effect on an audience, whether speech is likely "'to incite'" or to "'corrupt [the] morals,'" *id.*, at 52–53, n. 2. Cf. *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546, 561, and n. 11 (1975). In response to these grave "dangers of a censorship system," *Freedman*, *supra*, at 58, we held that a film licensing process must contain certain procedural safeguards in order to avoid constituting an invalid prior restraint: "(1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court." *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 227 (1990) (principal opinion of O'CONNOR, J., joined by STEVENS and KENNEDY, JJ.) (citing *Freedman*, *supra*, at 58–60).

Petitioners contend that the Park District, like the Board of Censors in *Freedman*, must initiate litigation every time it denies a permit and that the ordinance must specify a deadline for judicial review of a challenge to a permit denial. We reject those contentions. *Freedman* is inapposite because the licensing scheme at issue here is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum. The Park District's ordinance does not authorize a licensor to pass judgment on the content of speech: None of the grounds for denying a permit has anything to do with what a speaker might say. Indeed, the ordinance (unlike the classic censorship scheme) is not even directed to communicative activity as such, but rather to *all* activity conducted in a public park. The picnicker and soccer player, no less than the political activist or parade marshal, must apply for a permit if the 50-person limit is to be exceeded. And the object of the permit system (as plainly indicated by the permissible grounds for permit denial) is not to exclude communication of a particular content, but to coordinate multiple uses of limited space, to assure preservation of the park facilities, to prevent uses that are dangerous, unlawful, or impermissible under the Park District's rules, and to assure financial accountability for damage caused by the event. As the Court of Appeals well put it: "[T]o allow unregulated access to all comers could easily reduce rather than enlarge the park's utility as a forum for speech." 227 F. 3d, at 924.

We have never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in *Freedman*.[2] "A licensing standard which gives an official authority to censor the content of a speech differs *toto coelo* from one limited by its terms, or by nondiscriminatory practice, to considerations

[2] *FW/PBS, Inc.* v. *Dallas*, 493 U. S. 215, 224 (1990), which applied two of the *Freedman* requirements, involved a licensing scheme that "target[ed] businesses purveying sexually explicit speech."

of public safety and the like." *Niemotko* v. *Maryland*, 340 U. S. 268, 282 (1951) (Frankfurter, J., concurring in result). "[T]he [permit] required is not the kind of prepublication license deemed a denial of liberty since the time of John Milton but a ministerial, police routine for adjusting the rights of citizens so that the opportunity for effective freedom of speech may be preserved." *Poulos* v. *New Hampshire*, 345 U. S. 395, 403 (1953). Regulations of the use of a public forum that ensure the safety and convenience of the people are not "inconsistent with civil liberties but . . . [are] one of the means of safeguarding the good order upon which [civil liberties] ultimately depend." *Cox* v. *New Hampshire*, 312 U. S. 569, 574 (1941). Such a traditional exercise of authority does not raise the censorship concerns that prompted us to impose the extraordinary procedural safeguards on the film licensing process in *Freedman*.

III

Of course even content-neutral time, place, and manner restrictions can be applied in such a manner as to stifle free expression. Where the licensing official enjoys unduly broad discretion in determining whether to grant or deny a permit, there is a risk that he will favor or disfavor speech based on its content. See *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123, 131 (1992). We have thus required that a time, place, and manner regulation contain adequate standards to guide the official's decision and render it subject to effective judicial review. See *Niemotko*, *supra*, at 271. Petitioners contend that the Park District's ordinance fails this test.[3]

[3] Petitioners do not argue that the Park District's ordinance fails to satisfy other requirements of our time, place, and manner jurisprudence, under which the permit scheme "must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest, and must leave open ample alternatives for communication." *Forsyth County* v. *Nationalist Movement*, 505 U. S. 123, 130 (1992); see also *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984).

We think not. As we have described, the Park District may deny a permit only for one or more of the reasons set forth in the ordinance. See n. 1, *supra.* It may deny, for example, when the application is incomplete or contains a material falsehood or misrepresentation; when the applicant has damaged Park District property on prior occasions and has not paid for the damage; when a permit has been granted to an earlier applicant for the same time and place; when the intended use would present an unreasonable danger to the health or safety of park users or Park District employees; or when the applicant has violated the terms of a prior permit. See Chicago Park Dist. Code, ch. VII, § C.5.e. Moreover, the Park District must process applications within 28 days, § C.5.c, and must clearly explain its reasons for any denial, § C.5.e. These grounds are reasonably specific and objective, and do not leave the decision "to the whim of the administrator." *Forsyth County,* 505 U. S., at 133. They provide "'narrowly drawn, reasonable and definite standards'" to guide the licensor's determination, *ibid.* (quoting *Niemotko, supra,* at 271). And they are enforceable on review—first by appeal to the General Superintendent of the Park District, see Chicago Park Dist. Code, ch. VII, § C.6.a, and then by writ of common-law certiorari in the Illinois courts, see *Norton* v. *Nicholson,* 187 Ill. App. 3d 1046, 543 N. E. 2d 1053 (1989), which provides essentially the same type of review as that provided by the Illinois administrative procedure act, see *Nowicki* v. *Evanston Fair Housing Review Bd.,* 62 Ill. 2d 11, 14, 338 N. E. 2d 186, 188 (1975).

Petitioners contend that the criteria set forth in the ordinance are insufficiently precise because they are described as grounds on which the Park District "may" deny a permit, rather than grounds on which it *must* do so. This, they contend, allows the Park District to waive the permit requirements for some favored speakers, while insisting upon them for others. That is certainly not the intent of the ordinance, which the Park District has reasonably interpreted

to permit overlooking only those inadequacies that, under the circumstances, do no harm to the policies furthered by the application requirements. See Tr. of Oral Arg. 31–32. Granting waivers to favored speakers (or, more precisely, denying them to disfavored speakers) would of course be unconstitutional, but we think that this abuse must be dealt with if and when a pattern of unlawful favoritism appears, rather than by insisting upon a degree of rigidity that is found in few legal arrangements. On petitioners' theory, every obscenity law, or every law placing limits upon political expenditures, contains a constitutional flaw, since it merely permits, but does not require, prosecution. The prophylaxis achieved by insisting upon a rigid, no-waiver application of the ordinance requirements would be far outweighed, we think, by the accompanying senseless prohibition of speech (and of other activity in the park) by organizations that fail to meet the technical requirements of the ordinance but for one reason or another pose no risk of the evils that those requirements are designed to avoid. On balance, we think the permissive nature of the ordinance furthers, rather than constricts, free speech.

* * *

Because the Park District's ordinance is not subject to *Freedman*'s procedural requirements, we do not reach one of the questions on which we granted certiorari, and on which the Courts of Appeals are divided: whether the requirement of prompt judicial review means a prompt judicial determination or the prompt commencement of judicial proceedings. Compare *Nightclubs, Inc.* v. *Paducah*, 202 F. 3d 884, 892–893 (CA6 2000); *Baby Tam & Co.* v. *Las Vegas*, 154 F. 3d 1097, 1101 (CA9 1998); *11126 Baltimore Blvd., Inc.* v. *Prince George's County*, 58 F. 3d 988, 998–1001 (CA4 1995) (en banc), with *Boss Capital, Inc.* v. *Casselberry*, 187 F. 3d 1251, 1255–1257 (CA11 1999); *TK's Video, Inc.* v. *Denton County*, 24 F. 3d 705, 709 (CA5 1994); *Graff* v. *Chicago*, 9

F. 3d 1309, 1324–1325 (CA7 1993) (en banc); *Jews for Jesus, Inc.* v. *Massachusetts Bay Transp. Authority*, 984 F. 2d 1319, 1327 (CA1 1993). For the foregoing reasons, we affirm the judgment of the Court of Appeals.

It is so ordered.

Syllabus

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION, INC. *v.* GULF POWER CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 00–832. Argued October 2, 2001—Decided January 16, 2002*

The Pole Attachments Act requires the Federal Communications Commission (FCC) to set reasonable rates, terms, and conditions for certain attachments to telephone and electric poles. 47 U. S. C. § 224(b). A "pole attachment" includes "any attachment by a cable television system or provider of telecommunications service to a [utility's] pole, duct, conduit, or right-of-way." § 224(a)(4). Certain pole-owning utilities challenged an FCC order that interpreted the Act to cover pole attachments for commingled high-speed Internet and traditional cable television services and attachments by wireless telecommunications providers. After the challenges were consolidated, the Eleventh Circuit reversed the FCC on both points, holding that commingled services are not covered by either of the Act's two specific rate formulas—for attachments used "solely to provide cable service," § 224(d)(3), and for attachments that telecommunications carriers use for "telecommunications services," § 224(e)(1)—and so not covered by the Act. The Eleventh Circuit also held that the Act does not give the FCC authority to regulate wireless communications.

Held:

1. The Act covers attachments that provide high-speed Internet access at the same time as cable television. Pp. 333–341.

(a) This issue is resolved by the Act's plain text. No one disputes that a cable attached by a cable television company to provide only cable television service is an attachment "by a cable television system." The addition of high-speed Internet service on the cable does not change the character of the entity the attachment is "by." And that is what matters under the statute. This is the best reading of an unambiguous statute. Even if the statute were ambiguous, the FCC's reading must be accepted provided that it is reasonable. P. 333.

(b) Respondents cannot prove that the FCC's interpretation is unreasonable. This Court need not consider in the first instance the argument that a facility providing commingled cable television and In-

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*Together with No. 00–843, *Federal Communications Commission et al.* v. *Gulf Power Co. et al.*, also on certiorari to the same court.

ternet service is a "cable television system" only "to the extent that" it provides cable television, because neither the Eleventh Circuit nor the FCC has had the opportunity to pass upon it. This does not leave the cases in doubt, however. Because "by" limits pole attachments by who is doing the attaching, not by what is attached, an attachment by a "cable television system" is an attachment "by" that system whether or not it does other things as well. The Eleventh Circuit's theory that §§ 224(d)(3)'s and (e)(1)'s just and reasonable rates formulas narrow § 224(b)(1)'s general rate-setting mandate has no foundation in the plain language of §§ 224(a)(4) and (b). Neither subsection (d)'s and (e)'s text nor the Act's structure suggests that these are exclusive rates, for the sum of the transactions addressed by the stated rate formulas is less than the theoretical coverage of the Act as a whole. Likewise, 1996 amendments to the Act do not suggest an intent to decrease the FCC's jurisdiction. Because §§ 224(d) and (e) work no limitation on §§ 224(a)(4) and (b), this Court need not decide the scope of the former. The FCC had to go one step further, because once it decided that it had jurisdiction over commingled services, it then had to set a just and reasonable rate. In doing so it found that Internet services are not telecommunications services, but that it need not decide whether they are cable services. Respondents are frustrated by the FCC's refusal to categorize Internet services and its contingent decision that commingled services warrant the § 224(d) rate even if they are not cable service. However, the FCC cannot be faulted for dodging hard questions when easier ones are dispositive, and a challenge to the rate chosen by the FCC is not before this Court. Even if the FCC decides, in the end, that Internet service is not "cable service," the result obtained by its interpretation of §§ 224(a)(4) and (b) is sensible. The subject matter here is technical, complex, and dynamic; and, as a general rule, agencies have authority to fill gaps where statutes are silent. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 843–844. Pp. 333–341.

2. Wireless telecommunications providers' equipment is susceptible of FCC regulation under the Act. The parties agree that the Act covers wireline attachments by wireless carriers, but dispute whether it covers attachments composed of distinctively wireless equipment. The Act's text is dispositive. It requires FCC regulation of a pole attachment, § 224(b), which is defined as "any attachment by a . . . provider of telecommunications service," § 224(a)(4). "Telecommunications service," in turn, is defined as the offering of telecommunications to the public for a fee, "regardless of the facilities used." § 153(46). A provider of wireless telecommunications service is a "provider of telecommunications service," so its attachment is a "pole attachment." Respondents' attempt to seek refuge in §§ 224(a)(1) and (d)(2) is unavailing, for those

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sections do not limit which pole attachments are covered and thus do not limit §224(a)(4) or §224(b). Even if they did, respondents would have to contend with the fact that §224(d)(2)'s rate formula is based upon the poles' space usable for attachment of "wires, cable, and associated equipment." If, as respondents concede, the Act covers wireline attachments by wireless providers, then it must also cover their attachments of associated equipment. The FCC was not unreasonable in declining to draw a distinction between wire-based and wireless associated equipment, which finds no support in the Act's text and appears quite difficult to draw. And if the text were ambiguous, this Court would defer to the FCC's judgment on this technical question. Pp. 341–342.

3. Because the attachments at issue fall within the Act's heartland, there is no need either to enunciate or to disclaim a specific limiting principle based on the possibility that a literal interpretation of "any attachment" would lead to the absurd result that the Act would cover attachments such as, *e. g.*, clotheslines. Attachments of other sorts may be examined by the agency in the first instance. P. 342.

208 F. 3d 1263, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, GINSBURG, and BREYER, JJ., joined, and in which SOUTER and THOMAS, JJ., joined as to Parts I and III. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, J., joined, *post*, p. 347. O'CONNOR, J., took no part in the consideration or decision of the cases.

James A. Feldman argued the cause for petitioners in No. 00–843. With him on the brief were *Solicitor General Olson, Acting Solicitor General Underwood, Acting Assistant Attorney General Nannes, Deputy Solicitor General Wallace, Robert B. Nicholson, Robert J. Wiggers,* and *Jane E. Mago. Peter D. Keisler* argued the cause for petitioner in No. 00–832. With him on the briefs were *Paul J. Zidlicky, Daniel L. Brenner, Neal M. Goldberg, David L. Nicoll, Paul Glist, John D. Seiver,* and *Geoffrey C. Cook. Anthony C. Epstein* and *William Single IV* filed a brief for Worldcom, Inc., respondent under this Court's Rule 12.6, in support of petitioners in both cases.

Thomas P. Steindler argued the cause for respondents in both cases. With him on the brief for respondents American

Electric Power Service Corp. et al. were *Shirley S. Fujimoto*, *Christine M. Gill*, *J. Russell Campbell*, *Andrew W. Tunnell*, and *Ralph A. Peterson*. *Robert P. Williams II* and *Charles A. Zdebski* filed a brief for respondents Atlantic City Electric Co. et al. in both cases. *Jonathan L. Wiener* and *Neil Anderson* filed a brief for respondent TXU Electric Co. in both cases. *Jean G. Howard* filed a brief for Florida Power & Light Co., respondent in No. 00–843.†

JUSTICE KENNEDY delivered the opinion of the Court.

I

Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents.

Congress first addressed these transactions in 1978, by enacting the Pole Attachments Act, 92 Stat. 35, as amended, 47 U. S. C. §224 (1994 ed.), which requires the Federal Communications Commission (FCC) to "regulate the rates,

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†Briefs of *amici curiae* urging reversal were filed for the Association for Local Telecommunications Services et al. by *Philip L. Verveer*, *Theodore Case Whitehouse*, *Joseph M. Sandri, Jr.*, *Howard J. Symons*, and *Douglas I. Brandon;* and for the United States Telecom Association et al. by *William P. Barr*, *Michael E. Glover*, *Edward Shakin*, *Richard G. Taranto*, and *John W. Hunter*.

Briefs of *amici curiae* urging affirmance were filed for Real Access Alliance by *William Malone*, *Matthew C. Ames*, and *Clarine Nardi Riddle;* for the Site Owners and Managers Alliance of the Personal Communications Industry Association by *Dennis P. Corbett* and *H. Anthony Lehv;* and for the United Telecom Council et al. by *Jill Mace Lyon* and *Edward Comer*.

Briefs of *amici curiae* were filed for the Consumers Union et al. by *Cheryl A. Leanza*, *Andrew Jay Schwartzman*, and *Harold J. Feld;* and for Earthlink, Inc., by *John W. Butler*, *Earl W. Comstock*, and *David Baker*.

terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable." § 224(b). (The Act is set forth in full in the Appendix, *infra*.) The cases now before us present two questions regarding the scope of the Act. First, does the Act reach attachments that provide both cable television and high-speed (broadband) Internet service? Second, does it reach attachments by wireless telecommunications providers? Both questions require us to interpret what constitutes a "pole attachment" under the Act.

In the original Act a "pole attachment" was defined as "any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility," § 224(a)(4). The Telecommunications Act of 1996, § 703, 110 Stat. 150, expanded the definition to include, as an additional regulated category, "any attachment by a . . . provider of telecommunications service." § 224(a)(4) (1994 ed., Supp. V).

Cable companies had begun providing high-speed Internet service, as well as traditional cable television, over their wires even before 1996. The FCC had interpreted the Act to cover pole attachments for these commingled services, and its interpretation had been approved by the Court of Appeals for the District of Columbia Circuit. *Texas Util. Elec. Co.* v. *FCC*, 997 F. 2d 925, 927, 929 (1993). Finding nothing in the 1996 amendments to change its view on this question, the FCC continued to assert jurisdiction over pole attachments for these particular commingled services. *In re Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777 (1998). In the same order the FCC concluded further that the amended Act covers attachments by wireless telecommunications providers. "[T]he use of the word 'any'

precludes a position that Congress intended to distinguish between wire and wireless attachments." *Id.*, at 6798.

Certain pole-owning utilities challenged the FCC's order in various Courts of Appeals. See 47 U. S. C. § 402(a) (1994 ed.); 28 U. S. C. § 2342 (1994 ed.). The challenges were consolidated in the Court of Appeals for the Eleventh Circuit, see § 2112(a), which reversed the FCC on both points. 208 F. 3d 1263 (2000). On the question of commingled services, the court held that the two specific rate formulas in 47 U. S. C. §§ 224(d)(3) and (e)(1) (1994 ed., Supp. V) narrow the general definition of pole attachments. The first formula applies to "any pole attachment used by a cable television system solely to provide cable service," § 224(d)(3), and the second applies to "pole attachments used by telecommunications carriers to provide telecommunications services," § 224(e)(1). The majority concluded that attachments for commingled services are neither, and that "no other rates are authorized." 208 F. 3d, at 1276, n. 29. Because it found that neither rate formula covers commingled services, it ruled those attachments must be excluded from the Act's coverage.

On the wireless question, the majority relied on the statutory definition of "utility": "any person . . . who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." § 224(a)(1). The majority concluded that the definition of "utility" informed the definition of "pole attachment," restricting it to attachments used, at least in part, for wire communications. Attachments for wireless communications, it held, are excluded by negative implication. *Id.*, at 1274.

Judge Carnes dissented on these two issues. In his view, §§ 224(a)(4) and (b) "unambiguously giv[e] the FCC regulatory authority over wireless telecommunications service and Internet service." *Id.*, at 1281 (opinion concurring in part and dissenting in part). We granted certiorari. 531 U. S. 1125 (2001).

II

We turn first to the question whether the Act applies to attachments that provide high-speed Internet access at the same time as cable television, the commingled services at issue here. As we have noted, the Act requires the FCC to "regulate the rates, terms, and conditions for pole attachments," § 224(b) (1994 ed.), and defines these to include "any attachment by a cable television system," § 224(a)(4) (1994 ed., Supp. V). These provisions resolve the question.

No one disputes that a cable attached by a cable television company, which provides only cable television service, is an attachment "by a cable television system." If one day its cable provides high-speed Internet access, in addition to cable television service, the cable does not cease, at that instant, to be an attachment "by a cable television system." The addition of a service does not change the character of the attaching entity—the entity the attachment is "by." And this is what matters under the statute.

This is our own, best reading of the statute, which we find unambiguous. If the statute were thought ambiguous, however, the FCC's reading must be accepted nonetheless, provided it is a reasonable interpretation. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–844 (1984). Respondents' burden, then, is not merely to refute the proposition that "any attachment" means "any attachment"; they must prove also the FCC's interpretation is unreasonable. This they cannot do.

Some respondents now advance an interpretation of the statute not presented to the Court of Appeals, or, so far as our review discloses, to the FCC. They contend it is wrong to concentrate on whose attachment is at issue; the question, they say, is what does the attachment do? Under this approach, an attachment is only an attachment by a cable television system to the extent it is used to provide cable television. To the extent it does other things, it falls outside the ambit of the Act, and respondents may charge whatever

rates they choose. To make this argument, respondents rely on a statutory definition of "cable system" (which the FCC treats as synonymous with "cable television system," see 47 CFR § 76.5(a) (2000)). The definition begins as follows: "[T]he term 'cable system' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community." 47 U. S. C. § 522(7) (1994 ed., Supp. V). The first part of the definition would appear to cover commingled services, but the definition goes on to exclude "a facility of a common carrier . . . except that such facility shall be considered a cable system . . . to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services." *Ibid.*

Respondents assert that "most major cable companies are now common carriers [since they also provide] residential and/or commercial telephone service." Brief for Respondents American Electric Power Service Corp. et al. 20. If so, they contend, then for purposes of § 224(a)(4), a facility that provides commingled cable television and Internet service is a "cable television system" only "to the extent that" it provides cable television.

Even if a cable company is a common carrier because it provides telephone service, of course, the attachment might still fall under the second half of the "pole attachments" definition: "any attachment by a . . . provider of telecommunications service." § 224(a)(4). This argument, and the related assertion that "most major cable companies are now common carriers," need not be considered by us in the first instance, when neither the FCC nor the Court of Appeals has had the opportunity to pass upon the points. There is a factual premise here, as well as an application of the statute to the facts, that the FCC and the Court of Appeals ought

to have the opportunity to address in the first instance. This does not leave the cases in doubt, however. Even if a "cable television system" is best thought of as a certain "facility" rather than a certain type of entity, respondents still must confront the problem that the statute regulates attachments "by" (rather than "of") these facilities. The word "by" still limits pole attachments by who is doing the attaching, not by what is attached. So even if a cable television system is only a cable television system "to the extent" it provides cable television, an "attachment . . . by a cable television system" is still (entirely) an attachment "by" a cable television system whether or not it does other things as well.

The Court of Appeals based its ruling on a different theory. The statute sets two different formulas for just and reasonable rates—one for pole attachments "used by a cable television system solely to provide cable service," § 224(d)(3), and one for those "used by telecommunications carriers to provide telecommunications services," § 224(e)(1). In a footnote, the Court of Appeals concluded without analysis that "subsections (d) and (e) narrow (b)(1)'s general mandate to set just and reasonable rates." 208 F. 3d, at 1276, n. 29. In its view, Congress would not have provided two specific rate formulas, and yet left a residual category for which the FCC would derive its own view of just and reasonable rates. "The straightforward language of subsections (d) and (e) directs the FCC to establish two specific just and reasonable rates . . . ; no other rates are authorized." *Ibid.*

This conclusion has no foundation in the plain language of §§ 224(a)(4) and (b). Congress did indeed prescribe two formulas for "just and reasonable" rates in two specific categories; but nothing about the text of §§ 224(d) and (e) (1994 ed. and Supp. V), and nothing about the structure of the Act, suggest that these are the exclusive rates allowed. It is true that specific statutory language should control more general language when there is a conflict between the two.

Here, however, there is no conflict. The specific controls but only within its self-described scope.

The sum of the transactions addressed by the rate formulas—§ 224(d)(3) (1994 ed., Supp. V) (attachments "used by a cable television system solely to provide cable service") and § 224(e)(1) (attachments "used by telecommunications carriers to provide telecommunications services")—is less than the theoretical coverage of the Act as a whole. Section 224(a)(4) reaches "any attachment by a cable television system or provider of telecommunications service." The first two subsections are simply subsets of—but not limitations upon—the third.

Likewise, nothing about the 1996 amendments suggests an intent to decrease the jurisdiction of the FCC. To the contrary, the amendments' new provisions extend the Act to cover telecommunications. As we have noted, commingled services were covered under the statute as first enacted, in the views of the FCC and the Court of Appeals for the District of Columbia Circuit. *Texas Util. Elec. Co.* v. *FCC*, 997 F. 2d 925 (1993). Before 1996, it is true, the grant of authority in §§ 224(a)(4) and (b) was coextensive with the application of the single rate formula in § 224(d). The 1996 amendments limited § 224(d) to attachments used by a cable television system "solely to provide cable service," but—despite *Texas Util. Elec. Co.*—did not so limit "pole attachment" in § 224(a)(4). At this point, coextensiveness ended. Cable television systems that also provide Internet service are still covered by §§ 224(a)(4) and (b)—just as they were before 1996—whether or not they are now excluded from the specific rate formula of § 224(d); if they are, this would simply mean that the FCC must prescribe just and reasonable rates for them without necessary reliance upon a specific statutory formula devised by Congress.

The Court of Appeals held that §§ 224(d) and (e) implicitly limit the reach of §§ 224(a)(4) and (b); as a result, it was compelled to reach the question of the correct categoriza-

tion of Internet services—that is, whether these services are "cable service," § 224(d)(3), or "telecommunications services," § 224(e)(1). It held that they are neither. By contrast, we hold that §§ 224(d) and (e) work no limitation on §§ 224(a)(4) and (b); for this reason, and because we granted certiorari only to determine the scope of the latter provisions, we need not decide the scope of the former.

The FCC had to go a step further, because once it decided that it had jurisdiction over attachments providing commingled services, it then had to set a just and reasonable rate. Again, no rate challenge is before us, but we note that the FCC proceeded in a sensible fashion. It first decided that Internet services are not telecommunications services:

> "Several commentators suggested that cable operators providing Internet service should be required to pay the Section 224(e) telecommunications rate. We disagree. . . . Under [our] precedent, a cable television system providing Internet service over a commingled facility is not a telecommunications carrier subject to the revised rate mandated by Section 224(e) by virtue of providing Internet service." 13 FCC Rcd., at 6794–6795 (footnotes omitted).

After deciding Internet services are not telecommunications services, the FCC then found that it did not need to decide whether they are cable services:

> "Regardless of whether such commingled services constitute 'solely cable services' under Section 224(d)(3), we believe that the subsection (d) rate should apply. If the provision of such services over a cable television system is a 'cable service' under Section 224(d)(3), then the rate encompassed by that section would clearly apply. Even if the provision of Internet service over a cable television system is deemed to be neither 'cable service' nor 'telecommunications service' under the existing definitions, the Commission is still obligated under Sec-

> tion 224(b)(1) to ensure that the 'rates, terms and conditions [for pole attachments] are just and reasonable,' . . . [a]nd we would, in our discretion, apply the subsection (d) rate as a 'just and reasonable rate.'" *Id.*, at 6795–6796 (footnote omitted).

Respondents are frustrated by the FCC's refusal to categorize Internet services, and doubly frustrated by the FCC's contingent decision that even if commingled services are not "cable service," those services nevertheless warrant the § 224(d) rate. On the first point, though, decisionmakers sometimes dodge hard questions when easier ones are dispositive; and we cannot fault the FCC for taking this approach. The second point, in essence, is a challenge to the rate the FCC has chosen, a question not now before us.

We note that the FCC, subsequent to the order under review, has reiterated that it has not yet categorized Internet service. See, *e. g.*, Pet. for Cert. in No. 00–843, p. 15, n. 4. It has also suggested a willingness to reconsider its conclusion that Internet services are not telecommunications. See, *e. g.*, *In re Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, 15 FCC Rcd. 19287, 19294 (2000). Of course, the FCC has power to reconsider prior decisions. The order under review in this litigation, however, is both logical and unequivocal.

If the FCC should reverse its decision that Internet services are not telecommunications, only its choice of rate, and not its assertion of jurisdiction, would be implicated by the reversal. In this suit, though, we address only whether pole attachments that carry commingled services are subject to FCC regulation at all. The question is answered by §§ 224(a)(4) and (b), and the answer is yes.

Even if the FCC decides, in the end, that Internet service is not "cable service," the result obtained by its interpretation of §§ 224(a)(4) and (b) is sensible. Congress may well have chosen to define a "just and reasonable" rate for pure cable television service, yet declined to produce a prospec-

tive formula for commingled cable service. The latter might be expected to evolve in directions Congress knew it could not anticipate. As it was in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), the subject matter here is technical, complex, and dynamic; and as a general rule, agencies have authority to fill gaps where the statutes are silent, *id.*, at 843–844. It might have been thought prudent to provide set formulas for telecommunications service and "solely cable service," and to leave unmodified the FCC's customary discretion in calculating a "just and reasonable" rate for commingled services.

This result is more sensible than the one for which respondents contend. On their view, if a cable company attempts to innovate at all and provide anything other than pure television, it loses the protection of the Pole Attachments Act and subjects itself to monopoly pricing. The resulting contradiction of longstanding interpretation—on which cable companies have relied since before the 1996 amendments to the Act—would defeat Congress' general instruction to the FCC to "encourage the deployment" of broadband Internet capability and, if necessary, "to accelerate deployment of such capability by removing barriers to infrastructure investment." Pub. L. 104–104, Tit. VII, §§ 706(a), (b), and (c)(1), 110 Stat. 153, note following 47 U. S. C. § 157 (1994 ed., Supp. V). This congressional policy underscores the reasonableness of the FCC's interpretation: Cable attachments providing commingled services come within the ambit of the Act.

III

The second question presented is whether and to what extent the equipment of wireless telecommunications providers is susceptible of FCC regulation under the Act. The Eleventh Circuit held that "the act does not provide the FCC with authority to regulate wireless carriers." 208 F. 3d, at 1275. All parties now agree this holding was overstated.

"[T]o the extent a wireless carrier seeks to attach a wireline facility to a utility pole . . . the wireline attachment is subject to Section 224." Brief for Respondents American Electric Power Service Corp. et al. 31; see also Brief for Respondents Atlantic City Electric Co. et al. 40; Brief for Repondent TXU Electric Co. 18; Brief for Respondent Florida Power & Light Co. 10–11. We agree, and we so hold.

The dispute that remains becomes a narrow one. Are some attachments by wireless telecommunications providers—those, presumably, which are composed of distinctively wireless equipment—excluded from the coverage of the Act? Again, the dispositive text requires the FCC to "regulate the rates, terms, and conditions for pole attachments," § 224(b) (1994 ed.), and defines these to include "any attachment by a . . . provider of telecommunications service," § 224(a)(4) (1994 ed., Supp. V). "Telecommunications service," in turn, is defined as the offering of telecommunications to the public for a fee, "regardless of the facilities used," § 153(46). A provider of wireless telecommunications service is a "provider of telecommunications service," so its attachment is a "pole attachment."

Once more, respondents seek refuge in other parts of the statute. A "utility" is defined as an entity "who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." § 224(a)(1). The definition, though, concerns only whose poles are covered, not which attachments are covered. Likewise, the rate formula is based upon the poles' "usable space," which is defined as "the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment," § 224(d)(2) (1994 ed.). This definition, too, does not purport to limit which pole attachments are covered.

In short, nothing in § 224(a)(1) or § 224(d)(2) limits § 224(a)(4) or § 224(b). Even if they did, moreover, respondents still would need to confront the provision for "associ-

ated equipment." As noted above, respondents themselves concede that attachments of wires by wireless providers of telecommunications service are covered by the Act. See *supra*, at 339–340. It follows, in our view, that "associated equipment" which is indistinguishable from the "associated equipment" of wire-based telecommunications providers would also be covered. Respondents must demand a distinction between prototypical wire-based "associated equipment" and the wireless "associated equipment" to which they object. The distinction, they contend, is required by the economic rationale of the Act. The very reason for the Act is that—as to wires—utility poles constitute a bottleneck facility, for which utilities could otherwise charge monopoly rents. Poles, they say, are not a bottleneck facility for the siting of at least some, distinctively wireless equipment, like antennas. These can be located anywhere sufficiently high.

The economic analysis may be correct as far as it goes. Yet the proposed distinction—between prototypical wire-based "associated equipment" and the wireless "associated equipment" which allegedly falls outside of the rationale of the Act—finds no support in the text, and, based on our present understanding of the record before us, appears quite difficult to draw. Congress may have decided that the difficulties of drawing such a distinction would burden the orderly administration of the Act. In any event, the FCC was not unreasonable in declining to draw this distinction; and if the text were ambiguous, we would defer to its judgment on this technical question.

IV

Respondents insist that "any attachment" cannot mean "any attachment." Surely, they say, the Act cannot cover billboards, or clotheslines, or anything else that a cable television system or provider of telecommunications service should fancy attaching to a pole. Since the literal reading is absurd, they contend, there must be a limiting principle.

The FCC did not purport either to enunciate or to disclaim a specific limiting principle, presumably because, in its view, the attachments at issue here did not test the margins of the Act. The term "any attachment by a cable television system" covers at least those attachments which do in fact provide cable television service, and "any attachment by a . . . provider of telecommunications service" covers at least those which in fact provide telecommunications. Attachments of other sorts may be examined by the agency in the first instance.

The attachments at issue in this suit—ones which provide commingled cable and Internet service and ones which provide wireless telecommunications—fall within the heartland of the Act. The agency's decision, therefore, to assert jurisdiction over these attachments is reasonable and entitled to our deference. The judgment of the Court of Appeals for the Eleventh Circuit is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR took no part in the consideration or decision of these cases.

APPENDIX TO OPINION OF THE COURT

47 U. S. C. § 224. Pole attachments

(a) Definitions

As used in this section:

(1) The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(2) The term "Federal Government" means the Government of the United States or any agency or instrumentality thereof.

(3) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term "pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term "telecommunications carrier" (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions. For purposes of enforcing any determinations resulting from complaint procedures established pursuant to this subsection, the Commission shall take such action as it deems appropriate and necessary, including issuing cease and desist orders, as authorized by section 312(b) of this title.

(2) The Commission shall prescribe by rule regulations to carry out the provisions of this section.

(c) State regulatory authority over rates, terms, and conditions; preemption; certification; circumstances constituting State regulation

(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and

rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State.

(2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the Commission that—

(A) it regulates such rates, terms, and conditions; and

(B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments—

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter—

(i) within 180 days after the complaint is filed with the State, or

(ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

(d) Determination of just and reasonable rates; "usable space" defined

(1) For purposes of subsection (b) of this section, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and

actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(2) As used in this subsection, the term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e) of this section, this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.

(e) Regulations governing charges; apportionment of costs of providing space

(1) The Commission shall, no later than 2 years after February 8, 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

(4) The regulations required under paragraph (1) shall become effective 5 years after February 8, 1996. Any increase

in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

(f) Nondiscriminatory access

(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

(g) Imputation to costs of pole attachment rate

A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(h) Modification or alteration of pole, duct, conduit, or right-of-way

Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

(i) Costs of rearranging or replacing attachment

An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs

of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

JUSTICE THOMAS, with whom JUSTICE SOUTER joins, concurring in part and dissenting in part.

I join Parts I and III of the Court's opinion because I agree that the Pole Attachments Act, 47 U. S. C. § 224 (1994 ed. and Supp. V), grants the Federal Communications Commission (FCC or Commission) jurisdiction to regulate attachments by wireless telecommunications providers. The Court's conclusion in Part II of its opinion that the Act gives the FCC the authority to regulate rates for attachments providing commingled cable television service and high-speed Internet access may be correct as well.

Nevertheless, because the FCC failed to engage in reasoned decisionmaking before asserting jurisdiction over attachments transmitting these commingled services, I cannot agree with the Court that the judgment below should be reversed and the FCC's decision on this point allowed to stand. Instead, I would vacate the Court of Appeals' judgment and remand the cases to the FCC with instructions that the Commission clearly explain the specific statutory basis on which it is regulating rates for attachments that provide commingled cable television service and high-speed Internet access. Such a determination would require the Commission to decide at long last whether high-speed Internet access provided through cable wires constitutes cable service or telecommunications service or falls into neither category.

I

As these cases have been presented to this Court, the dispute over the FCC's authority to regulate rates for attachments providing commingled cable television service and high-speed Internet access turns on one central question:

whether 47 U. S. C. § 224(b)(1)'s general grant of authority empowers the FCC to regulate rates for "pole attachments," § 224(a)(4) (1994 ed., Supp. V), that are not covered by either of the Act's two specific rate methodologies, § 224(d) and § 224(e) (1994 ed. and Supp. V). Petitioners, including the FCC, contend that § 224(b)(1) (1994 ed.) authorizes the Commission to regulate rates for all "pole attachments" as that term is defined in § 224(a)(4) (1994 ed., Supp. V). Respondents, on the other hand, argue that the FCC may only regulate rates for attachments covered by one of the two specific rate methodologies set forth in the Act, the position adopted by the Court of Appeals below.

It is not at all clear, however, that the disputed attachments at issue here—those providing both cable television programming and high-speed Internet access—are attachments for which neither of the Act's two specific rate methodologies applies. The FCC has made no determination with respect to this issue that this Court (or any other court) can review. Indeed, there is nothing in the record indicating whether *any* pole attachments currently exist that fall within the terms of § 224(a)(4) yet are not covered by either of the Act's specific rate methodologies. Consequently, the specific legal issue the Court chooses to address is, at this time, nothing more than a tempest in a teapot.

The disputed attachments here provide two distinct services: conventional cable television programming and high-speed Internet access. No party disputes the FCC's conclusion that conventional cable television programming constitutes cable service. See *ante*, at 333. Crucially, however, the FCC has made no determination as to the proper statutory classification of high-speed Internet access using cable modem technology. In fact, in asserting its authority to regulate rates for attachments providing commingled cable television service and high-speed Internet access, the Commission explicitly declined to address the issue: "We need not decide at this time . . . the precise category into which Internet services fit." *In re Implementation of Sec-*

tion 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments, 13 FCC Rcd. 6777, 6795 (1998). In their petition for certiorari, the Government and the FCC explained that the FCC proceeded in this manner "because the classification of cable Internet access as 'cable service,' 'telecommunications service,' or some other form of service is the subject of ongoing proceedings before the Commission concerning issues outside the Pole Attachments Act," and it "'d[id] not intend . . . to foreclose any aspect of the Commission's ongoing examination of those issues.'" Pet. for Cert. in No. 00–843, p. 5, n. 2 (quoting 13 FCC Rcd., at 6795).

The statutory scheme, however, does not permit the FCC to avoid this question. None of the parties disputes that the two specific rate methodologies set forth in the Act are mandatory if applicable. If an attachment by a cable television system is used solely to provide cable service, the rate for that attachment *must* be set pursuant to the methodology contained in § 224(d). See 47 U. S. C. § 224(d)(3). And, if an attachment is used to provide telecommunications service, the rate for that attachment *must* be set pursuant to the methodology contained in § 224(e). As a result, before the FCC may regulate rates for a category of attachments, the statute requires the FCC to make at least two determinations: whether the attachments are used "solely to provide cable service" and whether the attachments are used to provide "telecommunications service."

Here, however, the FCC has failed to take either necessary step. For if high-speed Internet access using cable modem technology is a cable service,[1] then attachments providing commingled cable television programming and high-speed Internet access are used solely to provide cable service, and the rates for these attachments *must* be regulated pursuant to § 224(d)'s methodology. Or if, on the other hand, such In-

[1] See, *e. g.*, *MediaOne Group, Inc.* v. *County of Henrico*, 97 F. Supp. 2d 712, 715 (ED Va. 2000), aff'd on other grounds, 257 F. 3d 356 (CA4 2001) (concluding that cable modem service is a cable service).

ternet access constitutes a telecommunications service,[2] then these attachments are used to provide telecommunications service and *must* be regulated pursuant to § 224(e)'s rate methodology.[3]

Only after determining whether either of the Act's mandatory rate methodologies applies to particular attachments and answering that question in the negative does the statute allow the FCC to examine whether it may define a "just and reasonable" rate for those attachments pursuant to § 224(b)(1). Had the FCC engaged in such reasoned decisionmaking below and concluded that it had the authority to regulate rates for attachments used to provide commingled cable television service and high-speed Internet access *even though* high-speed Internet access using cable modem technology constitutes neither cable service nor telecommunications service, then this Court would have been able to review the Commission's order in a logical manner. We first would have asked whether the Commission had permissibly classified the services provided by these attachments. And, if we answered that question in the affirmative, we would then (and only then) have asked whether the FCC has the authority under § 224(b)(1) to regulate rates for attachments where Congress has not provided an applicable rate methodology.

Instead, the FCC asks this Court to sustain its authority to regulate rates for attachments providing commingled cable television programming and high-speed Internet access, even though it has yet to articulate the specific statutory basis for its authority to regulate these attachments. Yet, as Justice Harlan noted some years ago: "Judicial review of [an agency's] orders will . . . function accurately and effica-

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[2] See, *e. g.*, *AT&T Corp.* v. *Portland*, 216 F. 3d 871, 878 (CA9 2000) (concluding that cable modem service is a telecommunications service).

[3] Rates set pursuant to § 224(e)'s methodology are generally higher than those set pursuant to § 224(d)'s methodology. See Brief for Petitioners in No. 00–843, p. 24; Brief for Respondents Atlantic City Elec. Co. et al. 10, n. 2.

ciously only if the [agency] indicates fully and carefully the methods by which . . . it has chosen to act." *Permian Basin Area Rate Cases*, 390 U. S. 747, 792 (1968). Here, the FCC obviously has fallen far short of this standard.

The FCC seems to hold open the following options: (a) Rates for attachments providing commingled cable television programming and high-speed Internet access may be regulated pursuant to § 224(d)'s rate methodology; (b) rates for these attachments may be regulated pursuant to § 224(e)'s rate methodology; or (c) rates for these attachments may be regulated under the FCC's general authority to define "just and reasonable" rates pursuant to § 224(b)(1). To be sure, the Commission has rejected a fourth possible option advanced by respondents: that it lacks any authority to regulate rates for attachments providing commingled cable television programming and high-speed Internet access. But if the FCC wishes to regulate rates for these attachments, the statute requires the Commission to do more. Eliminating only one of four possible answers in this instance does not constitute reasoned decisionmaking.

For these reasons, the FCC's attempt to regulate rates for attachments providing commingled cable television service and high-speed Internet access while refusing to classify the services provided by these attachments is "arbitrary, capricious," and "not in accordance with law." 5 U. S. C. § 706(2)(A). I would therefore remand these cases to the FCC for the Commission to identify the specific statutory basis for its authority to regulate rates for attachments providing commingled cable television programming and high-speed Internet access: 47 U. S. C. § 224(d), § 224(e), or § 224(b)(1) (1994 ed. and Supp. V).

II

Notwithstanding the FCC's failure to classify the services provided by the attachments at issue in these cases, the Court nonetheless concludes that the FCC's analysis below

was adequate. Proceeding from the premise that the Commission in fact *has determined* that high-speed Internet access using cable modem technology is not a telecommunications service, see *ante*, at 337, the Court finds that the Commission, after reaching this conclusion, was not required to determine whether the attachments here are used solely to provide cable service. Even if the FCC had concluded that these attachments are not used solely to provide cable service, the Court notes that the FCC indicated it would have used its power under § 224(b)(1) to apply § 224(d)'s rate methodology regardless. See *ante*, at 337–338. Under the Court's reasoning, this is therefore a case of six of one, a half dozen of another. Either the FCC must apply § 224(d)'s methodology to attachments providing commingled cable television programming and high-speed Internet access because such attachments are used solely to provide cable service, see § 224(d)(3) (1994 ed., Supp. V), or the FCC has exercised its power under § 224(b)(1) (1994 ed.) to regulate the rates for these attachments and has chosen to "apply the [§ 224(d)] rate as a 'just and reasonable' rate." 13 FCC Rcd., at 6796. The problem with this position is twofold.

A

First, the FCC has not conclusively determined that high-speed Internet access using cable modem technology is *not* a telecommunications service. Admittedly, the FCC's discussion of the topic in its order below was opaque.[4] The

[4] Residential high-speed Internet access typically requires two separate steps. The first is transmission from a customer's home to an Internet service provider's (ISP's) point of presence. This service is generally provided by a cable or phone company over wires attached to poles, ducts, conduits, and rights-of-way. The second is a service delivered by an ISP to provide the connection between its point of presence and the Internet. See Brief for United States Telecom Assn. et al. as *Amici Curiae* 6. The Commission has classified the second step of this process, the service provided by an ISP, as an "information service." See, *e. g.*, *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability,*

Commission, however, has since made its lack of a position on the issue unambiguous.

The FCC has not represented to this Court that high-speed Internet access provided through cable wires is *not* a telecommunications service. To the contrary, it has made its agnosticism on the topic quite clear. In its petition for

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15 FCC Rcd. 385, 401 (1999). To date, however, the FCC has not classified the first step of this process in the cable context. Notably, when high-speed Internet access is provided over phone lines, in what is generally known as DSL service, the FCC has classified the first step of this process as involving the provision of a telecommunications service. See *id.*, at 402–403.

The FCC's order below reflected the Commission's position. In its order, the Commission never specifically addressed whether transmission over cable wires from a customer's residence to an ISP's point of presence constitutes a telecommunications service. Instead, the FCC merely referred to its earlier decision that ISPs do not provide a telecommunications service under the 1996 Telecommunications Act. It then reasoned that "[u]nder this precedent, a cable television system providing Internet service over a commingled facility is not a telecommunications carrier subject to the revised rate mandated by Section 224(e) by virtue of providing Internet service." *In re Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 13 FCC Rcd. 6777, 6794–6795 (1998). To be sure, to the extent that a cable television system actually provides Internet service like any other ISP it is undoubtedly providing an "information service" under the Commission's precedents. The Commission's analysis, however, failed to address the crucial question: What type of service is provided when cable wires are used to transmit information between a customer's home and an ISP's point of presence?

It is for this reason perhaps that the Commission explained in its order below that it was reviewing the extent to which its "definition[s] of 'telecommunications' and 'telecommunications service' . . . [were] consistent with the . . . Act" and did "not intend, in this proceeding, to foreclose any aspect of the Commission's ongoing examination of those issues." *Id.*, at 6795. Crucially, when the FCC released that "review," it expressly stated "no view . . . on the applicability of [its prior] analysis to cable operators providing Internet access service," and noted that "we have not yet established the regulatory classification of Internet services provided over cable television facilities." *In re Federal-State Joint Board on Universal Service*, 13 FCC Rcd. 11501, 11535, n. 140 (1998).

certiorari, for instance, the FCC complained that the Court of Appeals "mistakenly felt compelled to address whether a cable company's provision of Internet access is properly characterized as a 'cable service,' a 'telecommunications service,' or an 'information service.'" Pet. for Cert. in No. 00–843, p. 15, n. 4. It then clearly stated, "To date, the FCC *has taken no position* on that issue." *Ibid.* (emphasis added). The FCC not only repeated this contention in its merits brief, see Brief for Petitioners in No. 00–843, p. 30, but also explicitly asked this Court *not* to evaluate whether high-speed Internet access using cable modem technology is "a 'cable service,' a 'telecommunications service,' or some other kind of service," *ibid.*, *even if* we concluded such an inquiry was necessary to determine whether the FCC could regulate rates for attachments providing commingled cable television programming and high-speed Internet access. The reason it gave for this request was simple: The FCC should be allowed to "address the characterization issue in *the first instance.*" *Id.*, at 31 (emphasis added).

Outside of this litigation, the FCC has also unambiguously indicated that it holds "no position" as to whether high-speed Internet access using cable modem technology constitutes a telecommunications service. For example, in an *amicus curiae* brief submitted to the United States Court of Appeals for the Ninth Circuit, the FCC stated: "To date, the Commission has not decided whether broadband capability offered over cable facilities is a 'cable service' under the Communications Act, or instead should be classified as 'telecommunications' or as an 'information service.' The answer to this question is far from clear." Brief for FCC as *Amicus Curiae* in *AT&T Corp.* v. *Portland*, No. 99–35609 (CA9), p. 19.[5] Just last year, in fact, the Commission issued a notice

[5] The FCC's *amicus curiae* brief in *AT&T Corp.* v. *Portland* is completely inconsistent with the Court's position that the FCC has not decided whether high-speed Internet access using cable modem technology constitutes cable service but has concluded that such Internet access is not a

of inquiry seeking comment on the proper statutory classification of high-speed Internet access using cable modem technology. See *In re Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, 15 FCC Rcd. 19287 (2000). In this notice of inquiry, the FCC specifically sought comment on, among other issues, whether such Internet access "is a telecommunications service," see *id.*, at 19294, at no point indicating that the FCC had ever taken any position on the issue.

The Court's conclusion that the FCC has already decided that high-speed Internet access using cable modem technology is not a telecommunications service thus stands in stark contrast to the FCC's own view of the matter. "[T]he Commission has not determined whether Internet access via cable system facilities should be classified as a 'cable service' subject to Title VI of the Act, or as a 'telecommunications' or 'information service' subject to Title II. There may well come a time when it will be necessary and useful from a policy perspective for the Commission to make these legal determinations." *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp.*, 15 FCC Rcd. 9816, 9872 (2000) (footnote omitted).

The Court, however, does not dispute that reasoned decisionmaking required the FCC to make the "legal determination" whether high-speed Internet access using cable modem technology constitutes a telecommunications service nearly four years ago when the Commission asserted its authority

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telecommunications service. The FCC's brief questions whether the provision of Internet access through a cable modem is a "cable service" without taking a definitive position on the question. Brief for FCC as *Amicus Curiae* in No. 99–35609 (CA9), pp. 19–26. The FCC then observes, "[O]n a conceptual level, an argument can be made that Internet access is more appropriately characterized as an information or telecommunications service rather than a cable service." *Id.*, at 26. The Commission then notes, however, that it "has not yet conclusively resolved the issue." *Ibid.*

to regulate rates for attachments providing commingled cable television programming and high-speed Internet access. Instead, the Court mistakenly concludes that the Commission has reached a decision on the issue. In the Court's view, the FCC's repeated statements that it has not determined whether high-speed Internet access using cable modem technology constitutes a telecommunications service only reflect the "[Commission's] willingness to reconsider its conclusion that Internet services are not telecommunications." *Ante*, at 338. The relevant issue here, however, is not whether *Internet service* is a telecommunications service. Rather, it is whether *high-speed Internet access* provided through cable wires constitutes a telecommunications service. The two questions are entirely distinct, see n. 4, *supra*, and, as shown above, the FCC has never answered the latter question and has indicated as much no less than six times in recent years.[6] These cases therefore should be remanded to the FCC on this basis alone.

B

Second, even if the FCC had determined that high-speed Internet access provided through cable wires does not constitute a telecommunications service, these cases still would need to be remanded to the FCC. In order to endorse the FCC's primary argument that § 224(b)(1) provides the Commission with the authority to regulate rates for attachments not covered by either of the Act's specific rate methodologies, §§ 224(d) and 224(e), it seems necessary, as a matter of logic, for such attachments to exist. But as both the FCC and the

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[6] See Pet. for Cert. in No. 00–843, p. 15, n. 4; Brief for Petitioners in No. 00–843, at 30; Brief for FCC as *Amicus Curiae* in No. 99–35609 (CA9), at 19–26; *In re Federal-State Joint Board on Universal Service*, 13 FCC Rcd., at 11535, n. 140; *In re Inquiry Concerning High-Speed Access to Internet Over Cable and Other Facilities*, 15 FCC Rcd. 19287, 19294 (2000); *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., to AT&T Corp.*, 15 FCC Rcd. 9816, 9872 (2000).

Court admit, the attachments here very well may be addressed by one of the Act's rate formulas. Moreover, neither the FCC nor the Court advances a single example of any attachment that is a covered "pole attachment" under the definition provided in § 224(a)(4) (1994 ed., Supp. V) but is not covered by either of the Act's specific rate methodologies.

This obviously suggests a dilemma: If all attachments covered by the Act are in fact addressed by the Act's specific rate methodologies, then the coverage of § 224(a)(4) is not greater than the sum of §§ 224(d) and (e), and the FCC has no residual power to define "just and reasonable" rates for attachments pursuant to § 224(b)(1) (1994 ed.). Yet the Court affirms that the FCC indeed possesses just such authority.

Unable to provide a single example of an attachment not addressed by either of the Act's specific rate methodologies, the most the Court can argue is that "[t]he sum of the transactions addressed by the rate formulas . . . is less than the *theoretical* coverage of the Act as a whole." *Ante*, at 336 (emphasis added). The Court, though, offers no reasoning whatsoever in support of this observation, nor does it have any basis in the record.

Leaving aside that which may or may not be theoretically possible, I do not have a view at the present time as to whether any attachments exist that are covered "pole attachments" under the Act, see § 224(a)(4) (1994 ed., Supp. V), but do not fall within the ambit of § 224(d) or § 224(e) (1994 ed. and Supp. V).[7] I do question, however, whether Con-

[7] Two types of attachments are covered by § 224(a)(4) (1994 ed., Supp. V): those "by a cable television system" and those by a "provider of telecommunications service." Rates for attachments used to provide telecommunications service are covered by § 224(e)'s rate methodology regardless of whether these attachments are also used to provide cable service and/or other types of service as well. This is because § 224(e), unlike § 224(d)(3), does not contain the restriction that attachments must be used "solely" to provide a particular type of service for its methodology to apply. And rates for attachments used solely to provide cable service are regulated pursuant to § 224(d)'s methodology. See § 224(d)(3). As a result, the only

gress contemplated the existence of such attachments. Before 1996, the parties agree that the FCC did not possess any general authority to define "just and reasonable" rates for attachments pursuant to § 224(b)(1); rates for all attachments were set pursuant to the formula contained in § 224(d).[8] And if Congress in 1996 intended to transform § 224(b)(1) into a provision empowering the FCC to define "just and reasonable" rates for attachments, it did so in an odd manner: The 1996 amendments to the Act did not change a single word in the relevant statutory provision, and the legislative history contains nary a word indicating that Congress intended to take this step.[9]

Congress may have believed that attachments were *always* used to provide cable service and/or telecommunications service and then taken great care to ensure that specified rate methodologies covered all attachments providing each of these services and both of these services.[10] In

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"pole attachments," as that term is defined in the Act, that would appear to fall outside of the Act's two specified rate methodologies would be any attachments used to provide only cable service and an additional type of service other than telecommunications service.

[8] For this reason, the Court's reference to "the FCC's *customary discretion* in calculating a 'just and reasonable' rate for commingled services" is rather misleading. *Ante*, at 339 (emphasis added). Prior to 1996, the FCC clearly did not enjoy "discretion" in calculating "just and reasonable" rates for any regulated attachments.

[9] See H. R. Rep. No. 104–204, pp. 220–221 (1996).

[10] While no reference is made in either the text of the Act or the legislative history to attachments providing any services beyond cable service and telecommunications service, the broader Telecommunications Act of 1996 does define such a third category of services: "information services." The statute defines "information service" as "the offering of a capability for generating, acquiring . . . , or making available information *via telecommunications*." 110 Stat. 59, 47 U. S. C. § 153(20) (1994 ed., Supp. V) (emphasis added). Given this definition, *amicus curiae* Earthlink, Inc., argues that "it is logically, technically, and legally impossible for an information service that is offered to the public for a fee to exist without an underlying telecommunications service. Quite simply, the only way that an information service can reach the public is over a telecommunications

this vein, Congress in 1996 provided a new rate methodology for the new category of attachments added to the Act,[11] see § 224(e), and required that the old rate methodology be applied to the new category of attachments until regulations implementing the new rate methodology for these attachments could be promulgated, see § 224(d)(3).

It is certainly possible that Congress, in fact, has not provided an applicable rate methodology for all attachments covered by § 224(a)(4). Knowing the size and composition of the universe of attachments not addressed by the Act's two specific rate methodologies, however, would be extremely useful in evaluating the reasonableness of the FCC's position that it may regulate rates for those attachments. So in the complete absence of evidence concerning whether any pole attachments actually exist that are not covered by either of the Act's two specific rate methodologies, my position is simple: It is not conducive to "accurate" or "efficacious" judicial review to consider in the abstract whether the FCC has been given the authority to regulate rates for these "theoretical" attachments. See *Permian Basin Area Rate Cases*, 390 U. S., at 792. This is especially true given that the unusual posture of these cases is entirely the result of the FCC's failure to engage in reasoned decisionmaking below. See Part I, *supra*.

III

For many of the same reasons given by the Court, I believe it is likely that the FCC, at the end of the day,

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service." Brief for Earthlink, Inc., as *Amicus Curiae* 24. If Earthlink's position is correct, then this suggests that attachments used to provide an information service may always also provide a telecommunications service and would thus be regulated pursuant to § 224(e)'s methodology.

[11] Prior to 1996, the Act only granted the FCC jurisdiction to regulate one category of attachments, those by a cable television system. See 47 U. S. C. § 224(a)(4) (1994 ed.). In 1996, however, Congress expanded the scope of the Act to cover attachments by providers of telecommunication service as well. See Telecommunications Act of 1996, 47 U. S. C. § 224 (1994 ed., Supp. V).

has the authority to regulate rates for attachments providing commingled cable television programming and high-speed Internet access. Prior to 1996, the Act was interpreted to grant the FCC such broad authority, see *Texas Util. Elec. Co.* v. *FCC*, 997 F. 2d 925, 929 (CADC 1993), and there is no clear indication in either the text of the 1996 amendments to the Act or the relevant legislative history that Congress intended to take this power away from the FCC.

Moreover, such an interpretation of the 1996 amendments to the Act would be in substantial tension with two congressional policies underlying the Telecommunications Act of 1996. First, Congress directed the FCC to "encourage the deployment" of high-speed Internet capability and, if necessary, to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment." See §§ 706(a), (b), and (c)(1), 110 Stat. 153, note following 47 U. S. C. § 157 (1994 ed., Supp. V). And second, Congress declared that "[i]t is the policy of the United States . . . to promote the continued development of the Internet and other interactive computer services and other interactive media." § 509, 47 U. S. C. § 230(b)(1). Needless to say, withdrawing the Act's rate protection for the attachments of those cable operators providing high-speed Internet access through their wires and instead subjecting their attachments to monopoly pricing would appear to be fundamentally inconsistent with encouraging the deployment of cable modem service and promoting the development of the Internet.

That the FCC may have reached a permissible conclusion below, however, does not excuse its failure to engage in reasoned decisionmaking and does not justify the Court's decision to allow the Commission's order to stand.[12] If the FCC

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[12] Indeed, to the extent that the FCC holds open the possibility that high-speed Internet access using cable modem technology is a telecommunications service, its decision to regulate rates for the disputed attachments pursuant to § 224(d)'s rate methodology may result in utilities re-

is to regulate rates for attachments providing commingled cable television programming and high-speed Internet access, it is required to determine whether high-speed Internet access provided through cable wires is a cable service or telecommunications service or falls into neither category. See Part I, *supra*. The Commission does not claim to have taken this step. As a result, the judgment of the Court of Appeals should be vacated, and the cases should be remanded to the FCC with instructions that the Commission identify the specific statutory basis on which it believes it is authorized to regulate rates for attachments used to provide commingled cable television programming and high-speed Internet access: § 224(d), § 224(e), or § 224(b)(1).

For all of these reasons, I respectfully dissent from Parts II and IV of the Court's opinion.

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ceiving a rate that is not "just and reasonable." This is because rates calculated pursuant to § 224(e)'s methodology are generally higher than those calculated pursuant to § 224(d)'s methodology. See n. 3, *supra*.

Syllabus

LEE *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 00–6933. Argued October 29, 2001—Decided January 22, 2002

Petitioner Lee was tried for first-degree murder and a related crime in state court. His planned alibi defense—that he was in California with his family at the time of the murder—surfaced at each stage of the proceedings. Although Lee's mother, stepfather, and sister voluntarily came to Missouri to testify to his alibi, they left the courthouse without explanation at some point on the third day of trial, the day the defense case began. Lee's counsel moved for an overnight continuance to gain time to find the witnesses and enforce the subpoenas he had served on them. Neither the trial judge nor the prosecutor identified any procedural flaw in the motion's presentation or content. The trial judge denied the motion, stating that it looked as though the witnesses had in effect abandoned Lee, that his daughter's hospitalization would prevent the judge from being in court the next day, and that he would be unavailable on the following business day because he had another trial scheduled. The trial resumed without pause, no alibi witnesses testified, the jury found Lee guilty as charged, and he was sentenced to prison for life without possibility of parole. Lee's new trial motion, grounded in part on the denial of his continuance motion, was denied, as was his motion for state postconviction relief, in which he argued, *inter alia*, that the refusal to grant his continuance motion deprived him of his federal due process right to a defense. His direct appeal and his appeal from the denial of postconviction relief were consolidated before the Missouri Court of Appeals, which disposed of the case on state procedural grounds. The appeals court held that the denial of the continuance motion was proper because Lee's counsel had failed to comply with Missouri Supreme Court Rule 24.09, which requires that such motions be in writing and accompanied by an affidavit, and with Rule 24.10, which sets out the showings a movant must make to gain a continuance grounded on witnesses' absence. Declining to consider the merits of Lee's due process plea, the Missouri Court of Appeals affirmed his conviction and the denial of postconviction relief. He then filed a federal habeas application, which the District Court denied. The Eighth Circuit affirmed, ruling that federal review of Lee's due process claim was unavailable because the state court's re-

jection of that claim rested on state-law grounds—the failure of the continuance motion to comply with Rules 24.09 and 24.10—independent of the federal question and adequate to support the judgment, *Coleman* v. *Thompson*, 501 U. S. 722, 729.

Held: The Missouri Rules, as injected into this case by the state appellate court, did not constitute state grounds adequate to bar federal habeas review. Pp. 375–388.

(a) Although violation of firmly established and regularly followed state rules ordinarily bars federal review, there are exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question. See *Davis* v. *Wechsler*, 263 U. S. 22, 24. This case fits within that limited category. The Court is guided here by *Osborne* v. *Ohio*, 495 U. S. 103, 122–125. *Osborne* applied the general principle that an objection ample and timely to bring an alleged federal error to the attention of the trial court, enabling it to take appropriate corrective action, satisfies legitimate state interests, and therefore suffices to preserve the claim for federal review. The sequence of events in Lee's case also guides the Court's judgment. The asserted procedural oversights, Lee's alleged failures fully to comply with Rules 24.09 and 24.10, were first raised more than two and a half years after his trial. The two Rules, Missouri asserted, work together to enhance the reliability of a *trial court's* determination whether to delay a scheduled criminal trial due to the absence of a witness. Yet neither the prosecutor nor the trial judge so much as mentioned the Rules as a reason for denying Lee's continuance motion. If either had done so at the appropriate time, Lee would have had an opportunity to perfect his plea to hold the case over until the next day. Instead, the State first raised Rule 24.10 as a new argument in its brief to the Missouri Court of Appeals, and that court, it seems, raised Rule 24.09's writing requirements on its own motion. Pp. 375–380.

(b) Three considerations, in combination, lead to the conclusion that the asserted state grounds are inadequate to block adjudication of Lee's federal claim. First, when the trial judge denied Lee's motion, he stated a reason that could not have been countered by a perfect motion for continuance: He said he could not carry the trial over until the next day because he had to be with his daughter in the hospital; he further informed counsel that another scheduled trial prevented him from concluding Lee's case on the following business day. Although the judge hypothesized that the witnesses had abandoned Lee, no proffered evidence supported this supposition. Second, no published Missouri decision directs flawless compliance with Rules 24.09 and 24.10 in the

Syllabus

unique circumstances of this case—the sudden, unanticipated, and at the time unexplained disappearance of critical, subpoenaed witnesses on what became the trial's last day. Third and most important, the purpose of the Rules was served by Lee's submissions both immediately before and at the short trial. As to the "written motion" requirement, Rule 24.09 does not completely rule out oral continuance motions, and the trial transcript enabled an appellate court to comprehend the situation quickly. As to Rule 24.10, two of the Rule's components were stressed by the State. Missouri asserted, first, that Lee's counsel never mentioned in his oral motion the testimony he expected from the missing witnesses, and second, that Lee's counsel gave the trial court no reason to believe that those witnesses could be located within a reasonable time. These matters, however, were either covered by the oral continuance motion or otherwise conspicuously apparent on the record. Thus, the Rule's essential requirements were substantially met in this case, and nothing would have been gained by requiring Lee's counsel to recapitulate in rank order the showings the Rule requires. See, *e. g.*, *Osborne*, 495 U. S., at 124. The case is therefore remanded for adjudication of Lee's due process claim on the merits. Pp. 381–388.

213 F. 3d 1037, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined, *post*, p. 388.

Bonnie I. Robin-Vergeer, by appointment of the Court, 532 U. S. 956, argued the cause for petitioner. With her on the briefs were *David C. Vladeck* and *Alan B. Morrison*.

Paul C. Wilson argued the cause for respondent. With him on the brief were *Jeremiah W. (Jay) Nixon*, Attorney General of Missouri, *James R. Layton*, State Solicitor, and *Michael J. Spillane*, Assistant Attorney General.*

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*Briefs of *amici curiae* urging affirmance were filed for the State of Nebraska et al. by *Don Stenberg*, Attorney General of Nebraska, *Martin Swanson*, Assistant Attorney General, and *Dan Schweitzer*, joined by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Bruce M. Botelho* of Alaska, *Mark Pryor* of Arkansas, *Bill Lockyer* of California, *Ken Salazar* of Colorado, *Thurbert E. Baker* of Georgia, *Carla J. Stovall* of Kansas, *J. Joseph Curran, Jr.*, of Maryland, *Mike*

JUSTICE GINSBURG delivered the opinion of the Court.

Petitioner Remon Lee asserts that a Missouri trial court deprived him of due process when the court refused to grant an overnight continuance of his trial. Lee sought the continuance to locate subpoenaed, previously present, but suddenly missing witnesses key to his defense against felony charges. On direct review, the Missouri Court of Appeals disposed of the case on a state procedural ground. That court found the continuance motion defective under the State's rules. It therefore declined to consider the merits of Lee's plea that the trial court had denied him a fair opportunity to present a defense. Whether the state ground dispositive in the Missouri Court of Appeals is adequate to preclude federal habeas corpus review is the question we here consider and decide.

On the third day of his trial, Lee was convicted of first-degree murder and armed criminal action. His sole affirmative defense was an alibi; Lee maintained he was in California, staying with his family, when the Kansas City crimes for which he was indicted occurred. Lee's mother, stepfather, and sister voluntarily came to Missouri to testify on his behalf. They were sequestered in the courthouse at the start of the trial's third day. For reasons then unknown, they were not in the courthouse later in the day when defense counsel sought to present their testimony. Discovering their absence, defense counsel moved for a continuance until the next morning so that he could endeavor to locate the three witnesses and bring them back to court.

The trial judge denied the motion, stating that it looked to him as though the witnesses had "in effect abandoned

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Moore of Mississippi, *Mike McGrath* of Montana, *Frankie Sue Del Papa* of Nevada, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, and *Mark L. Shurtleff* of Utah; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

the defendant" and that, for personal reasons, he would "not be able to be [in court the next day] to try the case." Furthermore, he had "another case set for trial" the next weekday. App. 22. The trial resumed without pause, no alibi witnesses testified, and the jury found Lee guilty as charged.

Neither the trial judge nor the prosecutor identified any procedural flaw in the presentation or content of Lee's motion for a continuance. The Missouri Court of Appeals, however, held the denial of the motion proper because Lee's counsel had failed to comply with Missouri Supreme Court Rules not relied upon or even mentioned in the trial court: Rule 24.09, which requires that continuance motions be in written form, accompanied by an affidavit; and Rule 24.10, which sets out the showings a movant must make to gain a continuance grounded on the absence of witnesses.

We hold that the Missouri Rules, as injected into this case by the state appellate court, did not constitute a state ground adequate to bar federal habeas review. Caught in the midst of a murder trial and unalerted to any procedural defect in his presentation, defense counsel could hardly be expected to divert his attention from the proceedings rapidly unfolding in the courtroom and train, instead, on preparation of a written motion and affidavit. Furthermore, the trial court, at the time Lee moved for a continuance, had in clear view the information needed to rule intelligently on the merits of the motion. Beyond doubt, Rule 24.10 serves the State's important interest in regulating motions for a continuance—motions readily susceptible to use as a delaying tactic. But under the circumstances of this case, we hold that petitioner Lee, having substantially, if imperfectly, made the basic showings Rule 24.10 prescribes, qualifies for adjudication of his federal, due process claim. His asserted right to defend should not depend on a formal "ritual . . . [that] would further no perceivable state interest." *Osborne* v. *Ohio*, 495 U. S.

103, 124 (1990) (quoting *James* v. *Kentucky*, 466 U. S. 341, 349 (1984) (in turn quoting *Staub* v. *City of Baxley*, 355 U. S. 313, 320 (1958))) (internal quotation marks omitted).

I

On August 27, 1992, Reginald Rhodes shot and killed Steven Shelby on a public street in Kansas City, Missouri. He then jumped into the passenger side of a waiting truck, which sped away. Rhodes pleaded guilty, and Remon Lee, the alleged getaway driver, was tried for first-degree murder and armed criminal action.

Lee's trial took place within the span of three days in February 1994. His planned alibi defense—that he was in California with his family at the time of the murder—surfaced at each stage of the proceedings. During *voir dire* on the first day of trial, Lee's court-appointed defense attorney informed prospective jurors that "[t]here will be a defense in this case, which is a defense of alibi." App. 10; see also *ibid.* ("And we'll put on evidence—I can't go into it now—that he was somewhere else, he couldn't commit the crime and I believe the judge will give an instruction on alibi at the conclusion of my case."). Later in the *voir dire*, defense counsel identified the three alibi witnesses as Lee's mother, Gladys Edwards, Lee's sister, Laura Lee, and Lee's stepfather, James Edwards, a minister. *Id.*, at 11–13.

The planned alibi defense figured prominently in counsels' opening statements on day two of Lee's trial. The prosecutor, at the close of her statement, said she expected an alibi defense from Lee and would present testimony to disprove it. Tr. 187. Defense counsel, in his opening statement, described the alibi defense in detail, telling the jury that the evidence would show Lee was not in Kansas City, and therefore could not have engaged in crime there, in August 1992. App. 12–13. Specifically, defense counsel said three close family members would testify that Lee came to visit them in

Ventura, California, in July 1992 and stayed through the end of October. Lee's mother and stepfather would say they picked him up from the airport at the start of his visit and returned him there at the end. Lee's sister would testify that Lee resided with her and her four children during this time. All three would affirm that they saw Lee regularly throughout his unbroken sojourn. *Ibid.*

During the prosecution case, two eyewitnesses to the shooting identified Lee as the driver. The first, Reginald Williams, admitted during cross-examination that he had told Lee's first defense counsel in a taped interview that Rhodes, not Lee, was the driver. Tr. 285. Williams said he had given that response because he misunderstood the question and did not want to be "bothered" by the interviewer. *Id.*, at 283, 287. The second eyewitness, William Sanders, was unable to pick Lee out of a photographic array on the day of the shooting; Sanders identified Lee as the driver for the first time 18 months after the murder. *Id.*, at 413–414.

Two other witnesses, Rhonda Shelby and Lynne Bryant, were called by the prosecutor. Each testified that she knew Lee and had seen him in Kansas City the night before the murder. Both said Lee was with Rhodes, who had asked where Steven Shelby (the murder victim) was. *Id.*, at 443–487. The State offered no physical evidence connecting Lee to the murder and did not suggest a motive.

The defense case began at 10:25 a.m. on the third and final day of trial. Two impeachment witnesses testified that morning. Just after noon, counsel met with the trial judge in chambers for a charge conference. At that meeting, the judge apparently agreed to give an alibi instruction submitted by Lee. *Id.*, at 571.[1]

[1] That Lee had submitted an alibi instruction during the charge conference became apparent when the trial judge, delivering the charge, began to read the proposed instruction. He was interrupted by the prosecutor

At some point in the late morning or early afternoon, the alibi witnesses left the courthouse. Just after one o'clock, Lee took the stand outside the presence of the jury and, for the record, responded to his counsel's questions concerning his knowledge of the witnesses' unanticipated absence. App. 15. Lee, under oath, stated that Gladys and James Edwards and Laura Lee had voluntarily traveled from California to testify on his behalf. *Id.*, at 16. He affirmed his counsel's representations that the three witnesses, then staying with Lee's uncle in Kansas City, had met with Lee's counsel and received subpoenas from him; he similarly affirmed that the witnesses had met with a Kansas City police officer, who interviewed them on behalf of the prosecutor. *Id.*, at 16–18. Lee said he had seen his sister, mother, and stepfather in the courthouse that morning at 8:30 and later during a recess.

On discovering the witnesses' absence, Lee could not call them at his uncle's house because there was no phone on the premises. He asked his girlfriend to try to find the witnesses, but she was unable to do so. *Id.*, at 17. Although Lee did not know the witnesses' whereabouts at that moment, he said he knew "in fact they didn't go back to California" because "they [had] some ministering . . . to do" in Kansas City both Thursday and Friday evenings. *Id.*, at 18. He asked for "a couple hours' continuance [to] try to locate them, because it's very valuable to my case." *Ibid.* Defense counsel subsequently moved for a continuance until the next morning, to gain time to enforce the subpoenas he had served on the witnesses. *Id.*, at 20. The trial judge responded that he could not hold court the next day because "my daughter is going to be in the hospital all day . . . [s]o I've got to stay with her." *Ibid.*

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and defense counsel, who reminded him that the instruction was no longer necessary. Tr. 594–595.

After a brief further exchange between court and counsel,[2] the judge denied the continuance request. The judge observed:

> "It looks to me as though the folks were here and then in effect abandoned the defendant. And that, of course, we can't—we can't blame that on the State. The State had absolutely nothing to do with that. That's—it's too bad. The Court will not be able to be here tomorrow to try the case." *Id.*, at 22.

Counsel then asked for a postponement until Monday (the next business day after the Friday the judge was to spend with his daughter in the hospital). The judge denied that request too, noting that he had another case set for trial that day. *Ibid.*

In a final colloquy before the jury returned to the courtroom, defense counsel told the court he would be making a motion for judgment of acquittal. The judge asked, "You're going to give that to me . . . orally and you'll supplement that with a written motion?" Counsel agreed. *Id.*, at 23.

When the jurors returned, defense counsel informed them that the three witnesses from California he had planned to call "were here and have gone"; further, counsel did not "know why they've gone." *Id.*, at 25. The defense then rested. In closing argument, Lee's counsel returned to the alibi defense he was unable to present. "I do apologize," he said, "I don't know what happened to my witnesses. They're not here. Couldn't put them on on the question of alibi." *Id.*, at 26. The prosecutor commented on the same gap: "Where are those alibi witnesses that [defense counsel] promised you from opening[?] They're not here." *Id.*, at 27.

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[2] Responding to the court's questions, Lee's counsel said he had copies of the witnesses' written statements and their subpoenas. App. 20–21. Counsel next began to describe the subpoenas. When counsel listed Gladys Edwards, the court asked "[i]s she the mother?" *Id.*, at 21.

After deliberating for three hours, the jury convicted Lee on both counts. He was subsequently sentenced to prison for life without possibility of parole. *Id.*, at 43.

The trial court later denied Lee's new trial motion, which Lee grounded, in part, on the denial of the continuance motion. *Id.*, at 31–32, 42. Lee, at first *pro se* but later represented by appointed counsel, next filed a motion for state postconviction relief. Lee argued, *inter alia*, that the refusal to grant his request for an overnight continuance deprived him of his federal constitutional right to a defense. *Id.*, at 56–59.[3] In his postconviction motion, Lee asserted that the three witnesses had left the courthouse because "an unknown person," whom he later identified as an employee of the prosecutor's office, had told them "they were not needed to testify." *Id.*, at 56–58. The postconviction court denied the motion, stating that under Missouri law, an allegedly improper denial of a continuance fits within the category "trial error," a matter to be raised on direct appeal, not in a collateral challenge to a conviction. *Id.*, at 70.

Lee's direct appeal and his appeal from the denial of postconviction relief were consolidated before the Missouri Court of Appeals. See Mo. Sup. Ct. Rule 29.15(*l*) (1994). There, Lee again urged that the trial court's refusal to continue the case overnight denied him due process and the right to put on a defense. App. 90–95. In response, the State argued for the first time that Lee's continuance request had a fatal procedural flaw. *Id.*, at 110–115. In particular, the State contended that Lee's application failed to comply with Missouri Supreme Court Rule 24.10 (Rule 24.10), which lists the showings required in a continuance request based on

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[3] Missouri procedure at the time required Lee to file his postconviction motion in the sentencing court shortly after he filed his notice of direct appeal. See Mo. Sup. Ct. Rule 29.15(b) (1994) (requiring motion to be made within 30 days of filing of court transcript in appellate court considering direct appeal). The direct appeal was "suspended" while the trial court considered the postconviction motion. See Rule 29.15(*l*).

the absence of witnesses.[4] By the State's reckoning, Lee's request did not show the materiality of the California witnesses' testimony or the grounds for believing that the witnesses could be found within a reasonable time; in addition, the prosecution urged, Lee failed to "testify that the witnesse[s'] absence was not due to his own procurement." App. 113.

The Missouri Court of Appeals affirmed Lee's conviction and the denial of postconviction relief. *State* v. *Lee*, 935 S. W. 2d 689 (1996); App. 123–131. The appellate court first noted that Lee's continuance motion was oral and therefore did not comply with Missouri Supreme Court Rule 24.09 (Rule 24.09), which provides that such applications shall be in written form, accompanied by an affidavit. App. 126–127.[5]

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[4] Rule 24.10 reads:

"Misdemeanors or Felonies—Application for a Continuance on Account of Absence of Witnesses Shall Show What

"An application for a continuance on account of the absence of witnesses or their evidence shall show:

"(a) The facts showing the materiality of the evidence sought to be obtained and due diligence upon the part of the applicant to obtain such witness or testimony;

"(b) The name and residence of such witness, if known, or, if not known, the use of diligence to obtain the same, and also facts showing reasonable grounds for belief that the attendance or testimony of such witness will be procured within a reasonable time;

"(c) What particular facts the affiant believes the witness will prove, and that he knows of no other person whose evidence or attendance he could have procured at the trial, by whom he can prove or so fully prove the same facts;

"(d) That such witness is not absent by the connivance, consent, or procurement of the applicant, and such application is not made for vexation or delay, but in good faith for the purpose of obtaining a fair and impartial trial.

"If the court shall be of the opinion that the affidavit is insufficient it shall permit it to be amended."

[5] Rule 24.09 reads:

"Misdemeanors or Felonies—Application for Continuance—How Made

"An application for a continuance shall be made by a written motion accompanied by the affidavit of the applicant or some other credible person

"Thus," the Court of Appeals said, "the trial court could have properly denied the motion for a failure to comply with Rule 24.09." *Id.*, at 127. Even assuming the adequacy of Lee's oral motion, the court continued, the application "was made without the factual showing required by Rule 24.10." *Ibid.* The court did not say which components of Rule 24.10 were unsatisfied. "When a denial to grant a motion for continuance is based on a deficient application," the Court of Appeals next said, "it does not constitute an abuse of discretion." *Ibid.* Lee's subsequent motions for rehearing and transfer to the Missouri Supreme Court were denied.

In January 1998, Lee, proceeding *pro se*, filed an application for writ of habeas corpus in the United States District Court for the Western District of Missouri. *Id.*, at 132. Lee once again challenged the denial of his continuance motion. *Id.*, at 147–152. He appended affidavits from the three witnesses, each of whom swore to Lee's alibi; sister, mother, and stepfather alike stated that they had left the courthouse while the trial was underway because a court officer told them their testimony would not be needed that day. *Id.*, at 168–174.[6] Lee maintained that the State had engineered the witnesses' departure; accordingly, he as-

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setting forth the facts upon which the application is based, unless the adverse party consents that the application for continuance may be made orally."

[6] The witnesses' accounts of their departure from the courthouse were as follows:

Laura Lee: "[T]hose people in Missouri told us we could leave because OUR TESTIMONY would not be needed until the next day." App. 169.

Gladys Edwards: "[T]he officer of the court came and told us that the prosecutor stated that the state[']s case will again take up the remainder of that day. That [o]ur testimony will not be needed until the following day, that we could leave until the following day. He . . . told [u]s not to worry, the Judge knows *[w]e came to testify*, they have [o]ur statements, and the trial will not be over until we testify. So at those instructions we left." *Id.*, at 172.

James Edwards: "[W]hile at the [c]ourthouse, we were told by an officer of the court that [o]ur testimony would not be needed until the following day, we were excused until then." *Id.*, at 174.

serted that prosecutorial misconduct, not anything over which he had control, prompted the need for a continuance. *Id.*, at 148, 155–156.

The District Court denied the writ. No. 98–0074–CV–W–6–P (WD Mo., Apr. 19, 1999), App. 212–218. The witnesses' affidavits were not cognizable in federal habeas proceedings, the court held, because Lee could have offered them to the state courts but failed to do so. *Id.*, at 215 (citing 28 U. S. C. § 2254(e) (1994 ed., Supp. V)). The Federal District Court went on to reject Lee's continuance claim, finding in the Missouri Court of Appeals' invocation of Rule 24.10 an adequate and independent state-law ground barring further review. App. 217.

The Court of Appeals for the Eighth Circuit granted a certificate of appealability, limited to the question whether Lee's "due process rights were violated by the state trial court's failure to allow him a continuance," *id.*, at 232, and affirmed the denial of Lee's habeas petition. 213 F. 3d 1037 (2000) *(per curiam)*. Federal review of Lee's due process claim would be unavailable, the court correctly observed, if the state court's rejection of that claim "'rest[ed] . . . on a state law ground that is independent of the federal question and adequate to support the judgment,' regardless of 'whether the state law ground is substantive or procedural.'" *Id.*, at 1038 (quoting *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991)). "The Missouri Court of Appeals rejected Lee's claim because his motion for a continuance did not comply with [Rules] 24.09 and 24.10," the Eighth Circuit next stated. Thus, that court concluded, "the claim was procedurally defaulted." 213 F. 3d, at 1038.[7]

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[7] Lee had asked the federal appeals court to excuse the procedural lapse, suggesting that trial counsel's failure to follow Missouri's motion rules qualified as ineffective assistance of counsel. Lee had not exhausted that claim in state court, the Eighth Circuit responded, therefore he could not assert it in federal habeas proceedings. 213 F. 3d, at 1038. Furthermore, the federal appeals court ruled, Lee could not rest on a plea of

Chief District Judge Bennett, sitting by designation from the District Court for the Northern District of Iowa, dissented. In his view, Rules 24.09 and 24.10 did not supply state-law grounds "adequate" to preclude federal review in the particular circumstances of this case. *Id.*, at 1041–1049.

We granted Lee's *pro se* petition for a writ of certiorari, 531 U. S. 1189 (2001), and appointed counsel, 532 U. S. 956 (2001). We now vacate the Court of Appeals judgment.

II

This Court will not take up a question of federal law presented in a case "if the decision of [the state] court rests on a state law ground that is *independent* of the federal question and *adequate* to support the judgment." *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991) (emphases added). The rule applies with equal force whether the state-law ground is substantive or procedural. *Ibid.* We first developed the independent and adequate state ground doctrine in cases on direct review from state courts, and later applied it as well "in deciding whether federal district courts should address the claims of state prisoners in habeas corpus actions." *Ibid.* "[T]he adequacy of state procedural bars to the assertion of federal questions," we have recognized, is not within the State's prerogative finally to decide; rather, adequacy "is itself a federal question." *Douglas* v. *Alabama*, 380 U. S. 415, 422 (1965).

Lee does not suggest that Rules 24.09 and 24.10, as brought to bear on this case by the Missouri Court of Appeals, depended in any way on federal law. Nor does he question the general applicability of the two codified Rules. He does maintain that both Rules—addressed initially to Missouri trial courts, but in his case invoked only at the

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"actual innocence" to escape the procedural bar because "the factual basis for the [alibi witness] affidavits he relies on as new evidence existed at the time of the trial and could have been presented earlier." *Id.*, at 1039.

appellate stage—are inadequate, under the extraordinary circumstances of this case, to close out his federal, fair-opportunity-to-defend claim. We now turn to that dispositive issue.[8]

Ordinarily, violation of "firmly established and regularly followed" state rules—for example, those involved in this case—will be adequate to foreclose review of a federal claim. *James* v. *Kentucky*, 466 U. S. 341, 348 (1984); see *Ford* v. *Georgia*, 498 U. S. 411, 422–424 (1991). There are, however, exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question. See *Davis* v. *Wechsler*, 263 U. S. 22, 24 (1923) (Holmes, J.) ("Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."). This case fits within that limited category.

Our analysis and conclusion are informed and controlled by *Osborne* v. *Ohio*, 495 U. S. 103 (1990). There, the Court considered Osborne's objections that his child pornography conviction violated due process because the trial judge had not required the government to prove two elements of the alleged crime: lewd exhibition and scienter. *Id.*, at 107, 122–125. The Ohio Supreme Court held the constitutional objections procedurally barred because Osborne had failed to

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[8] Missouri argues in two footnotes to its brief that Lee's federal claim fails for a reason independent of Rules 24.09 and 24.10, namely, that he raised only state-law objections to denial of the continuance motion in state court. Brief for Respondent 16, n. 2, 32, n. 7. Lee urges, in response, that his direct appeal brief explicitly invoked due process and his right to present witnesses in his defense as guaranteed by the Fifth, Sixth, and Fourteenth Amendments. Reply Brief 11, n. 4 (citing App. 86–87, 90–95). Missouri did not advance its current contention in the State's Eighth Circuit brief or in its brief in opposition to the petition for certiorari. We therefore exercise "our discretion to deem the [alleged] defect waived." *Oklahoma City* v. *Tuttle*, 471 U. S. 808, 816 (1985).

object contemporaneously to the judge's charge, which did not instruct the jury that it could convict only for conduct that satisfied both the scienter and the lewdness elements. *Id.*, at 107–108, 123; see Ohio Rule Crim. Proc. 30(A) (1989) ("A party may not assign as error the giving or the failure to give any instructions unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection.").

We agreed with the State that Osborne's failure to urge the trial court to instruct the jury on scienter qualified as an "adequate state-law ground [to] preven[t] us from reaching Osborne's due process contention on that point." 495 U. S., at 123. Ohio law, which was not in doubt, required proof of scienter unless the applicable statute specified otherwise. *Id.*, at 112–113, n. 9, 123. The State's contemporaneous objection rule, we observed, "serves the State's important interest in ensuring that counsel do their part in preventing trial courts from providing juries with erroneous instructions." *Id.*, at 123.

"With respect to the trial court's failure to instruct on lewdness, however, we reach[ed] a different conclusion." *Ibid.* Counsel for Osborne had made his position on that essential element clear in a motion to dismiss overruled just before trial, and the trial judge, "in no uncertain terms," *id.*, at 124, had rejected counsel's argument. After a brief trial, the judge charged the jury in line with his ruling against Osborne on the pretrial motion to dismiss. Counsel's failure to object to the charge by reasserting the argument he had made unsuccessfully on the motion to dismiss, we held, did not deter our disposition of the constitutional question. "Given this sequence of events," we explained, it was proper to "reach Osborne's [second] due process claim," for Osborne's attorney had "pressed the issue of the State's failure of proof on lewdness before the trial court and . . . nothing would be gained by requiring Osborne's lawyer to

object a second time, specifically to the jury instructions." *Ibid.* In other words, although we did not doubt the general applicability of the Ohio Rule of Criminal Procedure requiring contemporaneous objection to jury charges, we nevertheless concluded that, in this atypical instance, the Rule would serve "no perceivable state interest." *Ibid.* (internal quotation marks omitted).

Our decision, we added in *Osborne*, followed from "the general principle that an objection which is ample and timely to bring the alleged federal error to the attention of the trial court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests, and therefore sufficient to preserve the claim for review here." *Id.*, at 125 (quoting *Douglas*, 380 U. S., at 422 (internal quotation marks omitted)). This general principle, and the unusual "sequence of events" before us—rapidly unfolding events that Lee and his counsel could not have foreseen, and for which they were not at all responsible—similarly guide our judgment in this case.

The dissent strives mightily to distinguish *Osborne*, an opinion JUSTICES KENNEDY and SCALIA joined, but cannot do so convincingly. In an intricate discussion of *Osborne* longer than the relevant section of *Osborne* itself, the dissent crafts its own rationales for the decision and sweeps away language its design cannot accommodate as "unnecessary" and "in tension" with the rest of the Court's analysis, *post*, at 399.

As attentive reading of the relevant pages of *Osborne* will confirm, 495 U. S., at 123–125, we here rely not on "isolated statements" from the opinion, *post*, at 396, but solidly on its analysis and holding on "the adequacy of state procedural bars to the assertion of federal questions." 495 U. S., at 125 (quoting *Douglas*, 380 U. S., at 422 (internal quotation marks omitted)).

According to the dissent in this case, *Osborne*'s discrete section trained on the adequacy of state-law grounds to bar

federal review had two bases. First, the dissent views as central to *Osborne* the "unforeseeab[ility]" of the Ohio Supreme Court's limiting construction of the child pornography statute at issue there, *i. e.*, that court's addition of the "lewdness" element on which Osborne failed to request a jury charge. *Post*, at 397–398; see also *post*, at 399. The dissent here is characteristically inventive. *Osborne* spoke not of the predictability *vel non* of the Ohio Supreme Court's construction; instead, this Court asked whether anything "would be gained by requiring Osborne's lawyer to object a second time" on the question of lewdness, 495 U. S., at 124, and answered that question with a firm "no." Tellingly, *Osborne* noted, without criticism, the Ohio Supreme Court's own indication that the limiting construction of the child pornography statute was *not* unpredictable, for it flowed from the "proper purposes" exceptions set out by the Legislature. *Id.*, at 113, n. 10.

Second, the dissent suggests that *Osborne* is enlightening only as to "Ohio's treatment of overbreadth objections." *Post*, at 398. *Osborne*, the dissent contends, "stands for the proposition that once a trial court rejects an overbreadth challenge, the defendant cannot be expected . . . to lodge a foreclosed objection to the jury instructions." *Post*, at 399. In truth, Ohio had no special-to-the-First Amendment "requirement." *Ibid.*[9] Rather, Ohio's firmly established, generally applicable practice was a standard contemporaneous objection rule for challenges to jury charges. See Ohio Rule Crim. Proc. 30(A) (1989). As *Osborne* paradigmatically illustrates, that Rule is unassailable in most instances, *i. e.*, it ordinarily serves a legitimate governmental interest; in rare

[9] The discrete section of *Osborne* in point, Part III, cites no First Amendment decision; it relies solely on decisions holding asserted state-law grounds inadequate in other contexts. See *Osborne* v. *Ohio*, 495 U. S. 103, 122–125 (1990) (citing *James* v. *Kentucky*, 466 U. S. 341, 349 (1984); *Davis* v. *Wechsler*, 263 U. S. 22, 24 (1923); *Douglas* v. *Alabama*, 380 U. S. 415, 421–422 (1965)).

circumstances, however, unyielding application of the general rule would disserve any perceivable interest.

The asserted procedural oversights in Lee's case, his alleged failures fully to comply with Rules 24.09 and 24.10, were first raised more than two and a half years after Lee's trial. The two Rules, Missouri maintains, "work together to enhance the reliability of a *trial court's* determination of whether to delay a scheduled criminal trial due to the absence of a witness." Brief for Respondent 29 (footnote omitted) (emphasis added). Nevertheless, neither the prosecutor nor the trial judge so much as mentioned the Rules as a reason for denying Lee's continuance motion.[10] If either prosecutor or judge considered supplementation of Lee's motion necessary, they likely would have alerted the defense at the appropriate time, and Lee would have had an opportunity to perfect his plea to hold the case over until the next day. Rule 24.10, we note, after listing the components of a continuance motion, contemplates subsequent perfection: "If the court shall be of the opinion that the affidavit is insufficient it shall permit it to be amended."

The State, once content that the continuance motion was ripe for trial court disposition on the merits, had a second thought on appeal. It raised Rule 24.10 as a new argument in its brief to the Missouri Court of Appeals; even then, the State did not object to the motion's oral form. App. 107–108, 110–115. The Missouri Court of Appeals, it seems, raised Rule 24.09's writing requirements ("a written motion accompanied by [an] affidavit") on its own motion.[11]

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[10] By contrast, the judge specifically directed Lee's counsel to supplement counsel's oral motion for judgment of acquittal with a written motion. See *supra*, at 370.

[11] The belated assertion of these Rules also explains why Lee did not contend in his state postconviction motion that counsel was constitutionally ineffective for failing meticulously to comply with Rules 24.09 and 24.10. That postconviction motion had been made and denied in the trial court before the Rules' entry into the case when Lee proceeded on appeal. See *supra*, at 371, n. 3.

Three considerations, in combination, lead us to conclude that this case falls within the small category of cases in which asserted state grounds are inadequate to block adjudication of a federal claim. First, when the trial judge denied Lee's motion, he stated a reason that could not have been countered by a perfect motion for continuance. The judge said he could not carry the trial over until the next day because he had to be with his daughter in the hospital; the judge further informed counsel that another scheduled trial prevented him from concluding Lee's case on the following business day. Although the judge hypothesized that the witnesses had "abandoned" Lee, *id.*, at 22, he had not "a scintilla of evidence or a shred of information" on which to base this supposition, 213 F. 3d, at 1040 (Bennett, C. J., dissenting).[12]

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[12] The dissent suggests that Lee's counsel decided not to put on the alibi defense promised in his opening statement because the prosecution's witnesses caused that planned defense to "collaps[e] altogether." See *post*, at 402. The record refutes that suggestion. Lee's counsel knew *before* he promised an alibi defense in his opening that the State planned to rebut it: The prosecutor's opening statement—given prior to defense counsel's—outlined the rebuttal witnesses' expected testimony. Tr. 178–187. Likewise, the prosecutor's statement that she "had in reserve other witnesses prepared to rebut the alibi testimony," *post*, at 403, was part of her opening statement, see Tr. 187. Furthermore, the alibi witnesses would have known of Lee's sentence in an unrelated case—a fact that the dissent suggests gave them "second thoughts" about testifying, *post*, at 403—a month before they traveled to Missouri. Tr. 25–26.

Utterly confounding are the dissent's depictions of "the realities of trial," *post*, at 400, capped by the statement that "[b]efore any careful trial judge granted a continuance in these circumstances, he or she would want a representation that the movant believed the missing witnesses were still prepared to offer the alibi testimony," *post*, at 403. Rule 24.10, the dissent insists, if meticulously observed, would have produced the very thing the court "needed to grant the motion: an assurance that the defense witnesses were still prepared to offer material testimony." *Post*, at 400; see *post*, at 403. No motion in the immediacy of the witnesses' sudden disappearance, however, could have provided assurance that they were still prepared to offer material testimony. The "careful trial judge" does not

Second, no published Missouri decision directs flawless compliance with Rules 24.09 and 24.10 in the unique circumstances this case presents—the sudden, unanticipated, and at the time unexplained disappearance of critical, subpoenaed witnesses on what became the trial's last day.[13] Lee's predicament, from all that appears, was one Missouri courts had not confronted before. "[A]lthough [the rules themselves] may not [have been] novel, . . . [their] application to the facts here was." *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 245 (1969) (Harlan, J., dissenting).

Third and most important, given "the realities of trial," *post*, at 400, Lee substantially complied with Missouri's key Rule. As to the "written motion" requirement, Missouri's brief in this Court asserted: "Nothing would have prevented counsel from drafting a brief motion and affidavit complying with Rul[e] 24.09 in longhand while seated in the courtroom."

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demand the impossible. The witnesses' absence was unexplained, and could not be explained on the afternoon of their disappearance. That is why an overnight continuance to locate the witnesses was so "very valuable to [Lee's] case." See *supra*, at 369.

[13] Missouri cites five cases as examples of the state courts' enforcement of Rules 24.09 and 24.10 (or their predecessors) "even in cases of exigency." Brief for Respondent 25–26. The five cases are: *State* v. *Gadwood*, 342 Mo. 466, 479, 116 S. W. 2d 42, 49 (1937) (defendant's counsel knew, or should have known, of likelihood of witnesses' inability to appear two days before trial); *State* v. *Cuckovich*, 485 S. W. 2d 16, 21 (Mo. 1972) (en banc) (defendant arrived at court on first day of trial with a letter from a doctor explaining that witness was ill); *State* v. *Scott*, 487 S. W. 2d 528, 530 (Mo. 1972) (absent witness was not subpoenaed); *State* v. *Settle*, 670 S. W. 2d 7, 13–14 (Mo. App. 1984) (deficient application filed six days before trial); *State* v. *Freeman*, 702 S. W. 2d 869, 874 (Mo. App. 1985) (absent witness had told officer serving subpoena that she would not appear). All of these cases are readily distinguishable; none involved the sudden and unexplained disappearance of a subpoenaed witness in the midst of trial. The adequacy of a state ground, of course, does not depend on an appellate decision applying general rules to the precise facts of the case at bar. But here, no prior decision suggests strict application to a situation such as Lee's.

Brief for Respondent 30.[14] At oral argument, however, Missouri's counsel edged away from this position. Counsel stated: "I'm not going to stand on the formality . . . of a writing or even the formality of an affidavit." Tr. of Oral Arg. 48. This concession was well advised. Missouri does not rule out oral continuance motions; they are expressly authorized, upon consent of the adverse party, by Rule 24.09. And the written transcript of the brief trial court proceedings, see *supra*, at 367, enabled an appellate court to comprehend the situation quickly. In sum, we are drawn to the conclusion reached by the Eighth Circuit dissenter: "[A]ny seasoned trial lawyer would agree" that insistence on a written continuance application, supported by an affidavit, "in the midst of trial upon the discovery that subpoenaed witnesses are suddenly absent, would be so bizarre as to inject an Alice-in-Wonderland quality into the proceedings." 213 F. 3d, at 1047.

Regarding Rule 24.10, the only Rule raised on appeal by the prosecution, see *supra*, at 371–372, the Missouri Court of Appeals' decision was summary. Although that court did not specify the particular components of the Rule neglected by Lee, the State here stresses two: "Lee's counsel never mentioned during his oral motion for continuance the testimony he expected the missing witnesses to give"; further, he "gave the trial court no reason to believe that the missing witnesses could be located within a reasonable time." Brief for Respondent 31.

These matters, however, were either covered by the oral continuance motion or otherwise conspicuously apparent on the record. The testimony that the alibi witnesses were expected to give had been previewed during *voir dire* at the outset of the three-day trial, then detailed in defense counsel's opening statement delivered just one day before the continuance motion. App. 10–13; see *Osborne*, 495 U. S.,

[14] Missouri's brief did not address the requirement that the affidavit be notarized.

at 123 (defense counsel's failure to object to jury charge did not bar consideration of federal claim where counsel had pressed the basic objection in a motion to dismiss made immediately before "brief" trial). Two of the prosecution's witnesses testified in part to anticipate and rebut the alibi. Tr. 443–487. An alibi instruction was apparently taken up at the charge conference held less than an hour before the trial court denied the continuance motion. See *supra*, at 368–369, n. 1. When defense counsel moved for a continuance, the judge asked a question indicating his recognition that alibi witness Gladys Edwards was Lee's mother. See *supra*, at 370, n. 2.

Given the repeated references to the anticipated alibi witness testimony each day of trial, it is inconceivable that anyone in the courtroom harbored a doubt about what the witnesses had traveled from California to Missouri to say on the stand or why their testimony was material, indeed indispensable, to the defense. It was also evident that no witness then in the Kansas City vicinity could effectively substitute for the family members with whom Lee allegedly stayed in Ventura, California. See Rule 24.10(a) and (c) (movant shall show "the materiality of the evidence sought," "[w]hat particular facts the affiant believes the witness will prove," and that "no other person" available to the movant could "so fully prove the same facts").

Moreover, Lee showed "reasonable grounds for belief" that the continuance would serve its purpose. See Rule 24.10(b). He said he knew the witnesses had not left Kansas City because they were to "ministe[r]" there the next two evenings; he provided their local address; and he sought less than a day's continuance to enforce the subpoenas for their attendance. App. 16–18.

Concerning his "diligence . . . to obtain" the alibi testimony, see Rule 24.10(a), Lee and his counsel showed: the witnesses had voluntarily traveled from California to appear at the trial; counsel had subpoenaed the witnesses when he

interviewed them in Kansas City; the witnesses had telephoned counsel the evening before the third trial day and had agreed to come to court that next day; the witnesses in fact were in court at 8:30 in the morning waiting in a witness room; and Lee saw them during a recess. App. 16–18. Countering "procurement" of the witnesses' absence by the defense, see Rule 24.10(d), Lee affirmed that he did not know "why they left" or "where they went," and asked for just "a couple hours' continuance [to] try to locate them." App. 17–18.

Rule 24.10, like other state and federal rules of its genre, serves a governmental interest of undoubted legitimacy. It is designed to arm trial judges with the information needed to rule reliably on a motion to delay a scheduled criminal trial. The Rule's essential requirements, however, were substantially met in this case. Few transcript pages need be read to reveal the information called for by Rule 24.10. "[N]othing would [have] be[en] gained by requiring" Lee's counsel to recapitulate in (a), (b), (c), (d) order the showings the Rule requires. See *Osborne*, 495 U. S., at 124; cf. *Staub* v. *City of Baxley*, 355 U. S. 313, 319–320 (1958) (failure to challenge "specific sections" of an ordinance not an adequate state ground barring review of federal claim when party challenged constitutionality of entire ordinance and all sections were "interdependent"). "Where it is inescapable that the defendant sought to invoke the substance of his federal right, the asserted state-law defect in form must be more evident than it is here." *James* v. *Kentucky*, 466 U. S., at 351.[15]

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[15] The dissent, indulging in hyperbole, describes our narrow opinion as a "comb" and "searc[h]" order to lower courts. *Post*, at 395. We hold, simply and only, that Lee satisfied Rule 24.10's essential elements. Just as in *Osborne*, see *supra*, at 377–378, we place no burden *on courts* to rummage through a ponderous trial transcript in search of an excuse for a defense counsel's lapse. The dissent, in this and much else, tilts at a windmill of its own invention.

The dissent critiques at great length *Henry* v. *Mississippi*, 379 U. S. 443 (1965), a case on which we do not rely in reaching our decision.[16] See *post*, at 393–395, 406. This protracted exercise is a prime example of the dissent's vigorous attack on an imaginary opinion that bears scant, if any, resemblance to the actual decision rendered today. We chart no new course. We merely apply *Osborne*'s sound reasoning and limited holding to the circumstances of this case. If the dissent's shrill prediction that today's decision will disrupt our federal system were accurate, we would have seen clear signals of such disruption in the 11 years since *Osborne*. The absence of even dim distress signals demonstrates both the tight contours of *Osborne* and the groundlessness of the dissent's frantic forecast of doom. See *United States* v. *Travers*, 514 F. 2d 1171, 1174 (CA2 1974) (Friendly, J.) ("Cassandra-like predictions in dissent are not a sure guide to the breadth of the majority's ruling").

It may be questioned, moreover, whether the dissent, put to the test, would fully embrace the unyielding theory that it is never appropriate to evaluate the state interest in a procedural rule against the circumstances of a particular

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[16] *Henry* has been called "radical," *post*, at 393 (quoting R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 584 (4th ed. 1996)), not for pursuing an "as applied" approach, as the dissent states, but for suggesting that the failure to comply with an anterior procedure was cured by compliance with some subsequent procedure. See *id.*, at 584–585. In *Henry*, the Court indicated that although there was no contemporaneous objection at trial to the admission of evidence alleged to have been derived from an unconstitutional search, a directed verdict motion made at the end of the prosecution's case was an adequate substitute. 379 U. S., at 448–449. Nothing of the sort is involved in this case. Lee is not endeavoring to designate some later motion, *e. g.*, one for a new trial, as an adequate substitute for a continuance motion. The question here is whether the movant must enunciate again, when making the right motion at the right time, supporting statements plainly and repeatedly made the days before. See *supra*, at 367–368. On whether such repetition serves a legitimate state interest, *Osborne*, not *Henry*, controls.

case. See *post*, at 393–395. If that theory holds, it would matter not at all why the witnesses left. Even if the evidence would show beyond doubt that the witnesses left because a court functionary told them to go, saying their testimony would not be needed until the next day, see *supra*, at 373, n. 6, Lee would lose under the dissent's approach. And that result would be unaffected should it turn out that the functionary acted on the instigation of a prosecutor who knew the judge would be at the hospital with his daughter the next day. See *supra*, at 369. The particular application, never mind how egregious, would be ignored so long as the Rule, like the mine run of procedural rules, generally serves a legitimate state interest.

To summarize, there was in this case no reference whatever in the trial court to Rules 24.09 and 24.10, the purported procedural impediments the Missouri Court of Appeals later pressed. Nor is there any indication that formally perfect compliance with the Rules would have changed the trial court's decision. Furthermore, no published Missouri decision demands unmodified application of the Rules in the urgent situation Lee's case presented. Finally, the purpose of the Rules was served by Lee's submissions both immediately before and at the short trial. Under the special circumstances so combined, we conclude that no adequate state-law ground hinders consideration of Lee's federal claim.[17]

Because both the District Court and the Court of Appeals held Lee's due process claim procedurally barred, neither court addressed it on the merits. We remand the case for that purpose. See *National Collegiate Athletic Assn.* v.

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[17] In view of this disposition, we do not reach further questions raised by Lee, *i. e.*, whether he has shown "cause" and "prejudice" to excuse any default, *Wainwright* v. *Sykes*, 433 U. S. 72, 90–91 (1977), or has made sufficient showing of "actual innocence" under *Schlup* v. *Delo*, 513 U. S. 298, 315 (1995), to warrant a hearing of the kind ordered in that case.

Smith, 525 U. S. 459, 470 (1999) (We ordinarily "do not decide in the first instance issues not decided below.").

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KENNEDY, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court's decision commits us to a new and, in my view, unwise course. Its contextual approach places unnecessary and unwarranted new responsibilities on state trial judges, injects troubling instability into the criminal justice system, and reaches the wrong result even under its own premises. These considerations prompt my respectful dissent.

I

The rule that an adequate state procedural ground can bar federal review of a constitutional claim has always been "about federalism," *Coleman* v. *Thompson*, 501 U. S. 722, 726 (1991), for it respects state rules of procedure while ensuring that they do not discriminate against federal rights. The doctrine originated in cases on direct review, where the existence of an independent and adequate state ground deprives this Court of jurisdiction. The rule applies with equal force, albeit for somewhat different reasons, when federal courts review the claims of state prisoners in habeas corpus proceedings, where ignoring procedural defaults would circumvent the jurisdictional limits of direct review and "undermine the State's interest in enforcing its laws." *Id.*, at 731.

Given these considerations of comity and federalism, a procedural ground will be deemed inadequate only when the

state rule "force[s] resort to an arid ritual of meaningless form." *Staub* v. *City of Baxley*, 355 U. S. 313, 320 (1958). *Staub*'s formulation was imprecise, but the cases that followed clarified the two essential components of the adequate state ground inquiry: First, the defendant must have notice of the rule; and second, the State must have a legitimate interest in its enforcement.

The Court need not determine whether the requirement of Missouri Supreme Court Rule 24.09 that all continuance motions be made in writing would withstand scrutiny under the second part of this test (or, for that matter, whether Lee had cause not to comply with it, cf. *infra*, at 405). Even if it could be assumed, for the sake of argument, that Rule 24.09 would not afford defendants a fair opportunity to raise a federal claim, the same cannot be said of Rule 24.10. The latter Rule simply requires a party requesting a continuance on account of missing witnesses to explain why it is needed, and the Rule serves an undoubted and important state interest in facilitating the orderly management of trials. Other States have similar requirements. See, *e. g.*, Ind. Code § 35–36–7–1(b) (1993); La. Code Crim. Proc. Ann., Art. 709 (West 1981); Miss. Code Ann. § 99–15–29 (1972); Okla. Stat., Tit. 12, § 668 (1993); S. C. Rule Crim. Proc. 7(b) (1990); Tex. Code Crim. Proc. Ann., Art. 29.06 (Vernon 1965); Vt. Rule Crim. Proc. 50(c)(1) (1983); Wash. Rev. Code § 10.46.080 (1990). The Court's explicit deprecation of Rule 24.10—and implicit deprecation of its many counterparts—is inconsistent with the respect due to state courts and state proceedings.

A

The initial step of the adequacy inquiry considers whether the State has put litigants on notice of the rule. The Court will disregard state procedures not firmly established and regularly followed. In *James* v. *Kentucky*, 466 U. S. 341, 346 (1984), for example, the rule was "not always clear or closely hewn to"; in *NAACP* v. *Alabama ex rel. Patterson*,

357 U. S. 449, 457 (1958), "petitioner could not fairly be deemed to have been apprised of [the rule's] existence." As the majority acknowledges, *ante*, at 367, Rule 24.10 is not in this category, for unlike the practices at issue in *James* and *Patterson*, Rule 24.10 is codified and followed in regular practice.

Several of the considerations offered in support of today's decision, however, would seem to suggest that the Court believes Rule 24.10 was not firmly established or regularly followed at the time of Lee's trial. For example, the majority cites the lack of published decisions directing flawless compliance with the Rule in the unique circumstances this case presents. *Ante*, at 382. While this description of Missouri law is dubious, see, *e. g.*, *State* v. *Scott*, 487 S. W. 2d 528, 530 (Mo. 1972), the Court's underlying, quite novel argument ignores the nature of rulemaking. If the Court means what it says on this point, few procedural rules will give rise to an adequate state ground. Almost every case presents unique circumstances that cannot be foreseen and articulated by prior decisions, and general rules like Rule 24.10 are designed to eliminate second-guessing about the rule's applicability in special cases. Rule 24.10's plain language admits of no exception, and the Court cites no Missouri case establishing a judge-made exemption in any circumstances, much less circumstances close to these. Its applicability here was clear.

The Court also ventures into new territory by implying that the trial judge's failure to cite the Rule was meaningful, *ante*, at 366, 380, 387, and by noting that he did not give a reason for denying the continuance that could have been addressed by a motion complying with the Rule, *ante*, at 381. If these considerations were significant, however, we would have relied upon them in previous cases where the trial court's denial of the defendant's motion on the merits was affirmed by the state appellate court because of an uncited procedural defect. See, *e. g.*, *James* v. *Kentucky*,

supra, at 343–344; *Staub* v. *City of Baxley*, *supra*, at 317–318. None of these decisions used this rationale to disregard a state procedural rule, and with good reason. To require trial judges, as a matter of federal law, to cite their precise grounds for decision would place onerous burdens on the state courts, and it is well settled that an appellate tribunal may affirm a trial court's judgment on any ground supported by the record. See *Smith* v. *Phillips*, 455 U. S. 209, 215, n. 6 (1982). Here, moreover, the uncited procedural rule was designed both to "permi[t] the trial court to pass on the merits," *State* v. *Robinson*, 864 S. W. 2d 347, 349 (Mo. App. 1993), and to facilitate the appellate court's review of asserted due process errors. Notwithstanding the Court's guess about the judge's and prosecution's inner thoughts concerning the completeness of Lee's motion, see *ante*, at 380, the Missouri Court of Appeals tells us that Lee's failure to comply with the Rule is considered consequential as a matter of state law. If Lee had complied with Rule 24.10, the trial court might have granted the continuance or given a different reason for denying it. The trial court, in effect, is deemed to have relied on Rule 24.10 when it found Lee had not made a sufficient showing.

Lee was on notice of the applicability of Rule 24.10, and the Court appears to recognize as much. The consideration most important to the Court's analysis, see *ante*, at 382, relates not to this initial question, but rather to the second part of the adequacy inquiry, which asks whether the rule serves a legitimate state interest. Here, too, in my respectful view, the Court errs.

B

A defendant's failure to comply with a firmly established and regularly followed rule has been deemed an inadequate state ground only when the State had no legitimate interest in the rule's enforcement. *Osborne* v. *Ohio*, 495 U. S. 103, 124 (1990); *James* v. *Kentucky*, *supra*, at 349; *Michigan* v. *Tyler*, 436 U. S. 499, 512, n. 7 (1978). Most state pro-

cedures are supported by various legitimate interests, so established rules have been set aside only when they appeared to be calculated to discriminate against federal law, or, as one treatise puts it, they did not afford the defendant "a reasonable opportunity to assert federal rights." 16B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure §4027, p. 392 (2d ed. 1996) (hereinafter Wright & Miller). See, *e. g.*, *Douglas* v. *Alabama*, 380 U. S. 415, 422–423 (1965) (rule requiring continuous repetition of identical constitutional objections); *Staub* v. *City of Baxley*, 355 U. S., at 317–318 (rule requiring defendant to challenge constitutionality of individual sections of statute); *Davis* v. *Wechsler*, 263 U. S. 22, 24 (1923) (rule waiving jurisdictional objections upon entry of appearance of federal defendant's successor-in-interest).

In light of this standard, the adequacy of Rule 24.10 has been demonstrated. Delays in criminal trials can be "a distinct reproach to the administration of justice," *Powell* v. *Alabama*, 287 U. S. 45, 59 (1932), and States have a strong interest in ensuring that continuances are granted only when necessary. Rule 24.10 anticipates that at certain points during a trial, important witnesses may not be available. In these circumstances, a continuance may be appropriate if the movant makes certain required representations demonstrating good cause to believe the continuance would make a real difference to the case.

The Court acknowledges, as it must, that Rule 24.10 does not discriminate against federal law or deny defendants a reasonable opportunity to assert their rights. Instead, the Rule "serves a governmental interest of undoubted legitimacy" in "arm[ing] trial judges with the information needed to rule reliably on a motion to delay a scheduled criminal trial." *Ante*, at 385. Nor is there any doubt Lee did not comply with the Rule, for the Missouri court's word on that state-law question is final. See *Elmendorf* v. *Taylor*, 10 Wheat. 152, 159–160 (1825) (Marshall, C. J.). The Court's

acceptance of these two premises should lead it to conclude that Lee's violation of the Rule was an adequate state ground for the Missouri court's decision.

Yet the Court deems Lee's default inadequate because, it says, to the extent feasible under the circumstances, he substantially complied with the Rule's essential requirements. *Ante*, at 385. These precise terms have not been used in the Court's adequacy jurisprudence before, and it is necessary to explore their implications. The argument is not that Missouri has no interest in enforcing compliance with the Rule in general, but rather that it had no interest in enforcing full compliance in this particular case. This is so, the Court holds, because the Rule's essential purposes were substantially served by other procedural devices, such as opening statement, *voir dire*, and Lee's testimony on the stand. These procedures, it is said, provided the court with the information the Rule requires the motion itself to contain. *Ante*, at 382–385. So viewed, the Court's substantial-compliance terminology begins to look more familiar: It simply paraphrases the flawed analytical approach first proposed by the Court in *Henry* v. *Mississippi*, 379 U. S. 443 (1965), but not further ratified or in fact used to set aside a procedural rule until today.

Before *Henry*, the adequacy inquiry focused on the general legitimacy of the established procedural rule, overlooking its violation only when the rule itself served no legitimate interest. See, *e. g.*, *Douglas* v. *Alabama*, *supra*, at 422–423; *Davis* v. *Wechsler*, *supra*, at 24. *Henry* was troubling, and much criticized, because it injected an as-applied factor into the equation. See, *e. g.*, R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 584 (4th ed. 1996) (hereinafter Hart & Wechsler) (calling this element of *Henry* "radical"); 16B Wright & Miller § 4028, at 394 (arguing that *Henry*'s approach—under which "state procedural rules may accomplish forfeiture only if necessary to further a legitimate state interest in the

actual circumstances of application to the very case before the court"—"unduly subordinates state interests"); cf. *ante*, at 376 ("There are . . . exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate"). The petitioner in *Henry* had defaulted his Fourth Amendment claim in state court by failing to lodge a contemporaneous objection to the admission of the contested evidence. Despite conceding the legitimate state interest in enforcing this common rule, the Court vacated the state-court judgment, proposing that the default may have been inadequate because the rule's "purpose . . . may have been substantially served by petitioner's motion at the close of the State's evidence asking for a directed verdict." *Henry* v. *Mississippi*, *supra*, at 448. The suggestion, then, was that a violation of a rule serving a legitimate state interest may be ignored when, in the peculiar circumstances of a given case, the defendant utilized some other procedure serving the same interest.

For all *Henry* possessed in mischievous potential, however, it lacked significant precedential effect. *Henry* itself did not hold the asserted state ground inadequate; instead it remanded for the state court to determine whether "petitioner's counsel deliberately bypassed the opportunity to make timely objection in the state court." 379 U. S., at 449–453. The cornerstone of that analysis, the deliberate-bypass standard of *Fay* v. *Noia*, 372 U. S. 391, 426–434 (1963), later was limited to its facts in *Wainwright* v. *Sykes*, 433 U. S. 72, 87–88 (1977), and then put to rest in *Coleman* v. *Thompson*, 501 U. S., at 750. Subsequent cases maintained the pre-*Henry* focus on the general validity of the challenged state practice, either declining to cite *Henry* or framing its holding in innocuous terms. See, *e. g.*, *James* v. *Kentucky*, 466 U. S., at 349; *Monger* v. *Florida*, 405 U. S. 958 (1972); see also Hart & Wechsler 585–586 (describing the "[d]emise of *Henry*"); 16B Wright & Miller § 4020, at 291 ("Later decisions, over a period now measured in decades,

are more remarkable for frequently omitting any reference to the Henry decision than for clarifying it").

There is no meaningful distinction between the *Henry* Court's analysis and the standard the Court applies today, and this surprising reinvigoration of the case-by-case approach is contrary to the principles of federalism underlying our habeas corpus jurisprudence. Procedural rules, like the substantive laws they implement, are the products of sovereignty and democratic processes. The States have weighty interests in enforcing rules that protect the integrity and uniformity of trials, even when "the reason for a rule does not clearly apply." *Staub* v. *City of Baxley*, 355 U. S., at 333 (Frankfurter, J., dissenting). Regardless of the particular facts in extraordinary cases, then, Missouri has a freestanding interest in Rule 24.10 as a rule.

By ignoring that interest, the majority's approach invites much mischief at criminal trials, and the burden imposed upon States and their courts will be heavy. All requirements of a rule are, in the rulemaker's view, essential to fulfill its purposes; imperfect compliance is thus, by definition, not compliance at all. Yet the State's sound judgment on these matters can now be overridden by a federal court, which may determine for itself, given its own understanding of the rule's purposes, whether a requirement was essential or compliance was substantial in the unique circumstances of any given case. Henceforth, each time a litigant does not comply with an established state procedure, the judge must inquire, even "in the midst of trial, . . . whether noncompliance should be excused because some alternative procedure might be deemed adequate in the particular situation." Hart & Wechsler 585. The trial courts, then the state appellate courts, and, in the end, the federal habeas courts in numerous instances must comb through the full transcript and trial record, searching for ways in which the defendant might have substantially complied with the essential requirements of an otherwise broken rule.

The Court seeks to ground its renewal of *Henry*'s long-quiescent dictum in our more recent decision in *Osborne* v. *Ohio*, 495 U. S., at 122–125. Though isolated statements in *Osborne* might appear to support the majority's approach—or, for that matter, *Henry*'s approach—*Osborne*'s holding does not.

This case bears little resemblance, if any, to *Osborne*. The Ohio statute in question there made it criminal to possess a photograph of a minor in "a state of nudity." Ohio Rev. Code Ann. §2907.323(A)(3) (Supp. 1989). In a pretrial motion to dismiss, Osborne objected to the statute as overbroad under the First Amendment. The state trial court denied the motion, allowed the case to proceed, and adopted no limiting construction of the statute when it instructed the jury on the elements of the crime.

In his appeal to the Ohio Supreme Court, Osborne argued that the statute violated the First Amendment for two reasons: First, it prohibited the possession of nonlewd material; and second, it lacked a scienter requirement. In rejecting the first contention, the appellate court did what the trial court had not: It adopted a limiting construction so that "nudity constitute[d] a lewd exhibition or involve[d] a graphic focus on the genitals." *State* v. *Young*, 37 Ohio St. 3d 249, 252, 525 N. E. 2d 1363, 1368 (1988). In addressing Osborne's second point, the Ohio Supreme Court noted that another Ohio statute provided a *mens rea* of recklessness whenever, as was the case there, the criminal statute at issue was silent on the question. *Id.*, at 252–253, 525 N. E. 2d, at 1368 (citing Ohio Rev. Code Ann. §2901.21(B) (1987)). Osborne also argued that his due process rights were violated because the trial court had not instructed the jury on the elements of lewdness and recklessness that the Ohio Supreme Court had just read into the statute. The appellate court rejected this claim on procedural grounds, observing that Osborne "neither requested such . . . charge[s] nor objected to the instructions as given." 37 Ohio St. 3d, at 254, 258,

525 N. E. 2d, at 1369, 1373 (citing Ohio Rule Crim. Proc. 30(A) (1989)).

When Osborne's case reached this Court, the parties' due process discussion focused on the merits, not the procedural bar. "It is a violation of due process," Osborne's brief argued, "where . . . a state supreme court adds new elements to save a statute and then affirms the conviction." Brief for Appellant, O. T. 1989, No. 88–5986, p. 25. Ohio's response, contending that the appellate court's limiting construction was "foreseeable," mentioned the procedural rule in a short, conclusory paragraph. Brief for Appellee, O. T. 1989, No. 88–5986, pp. 43–44. Against this backdrop, we decided the asserted procedural ground was adequate to block our assessment of the scienter claim but not the lewdness claim. *Osborne* v. *Ohio*, *supra*, at 125–126. This was not the watershed holding today's majority makes it out to be. The procedure invoked by the State with respect to lewdness required defendants in all overbreadth cases to take one of two steps, neither of which comported with established adequacy principles.

First, Ohio's primary contention was, as we noted, "that counsel should . . . have insisted that the court instruct the jury on lewdness" by proposing an instruction mirroring the unforeseeable limiting construction the Ohio Supreme Court would later devise. 495 U. S., at 124. To the extent the State required defendants to exhibit this sort of prescience, it placed a clear and unreasonable burden upon their due process rights. *Shuttlesworth* v. *Birmingham*, 394 U. S. 147, 155–157 (1969); see also *Osborne* v. *Ohio*, *supra*, at 118 ("[W]here a State Supreme Court narrows an unconstitutionally overbroad statute, the State must ensure that defendants are convicted under the statute as it is subsequently construed and not as it was originally written"). Osborne might, for example, have guessed "obscenity" rather than mere "lewdness," or "focus on the genitals" without the additional "lewdness" option; yet according to the State,

neither proposed instruction would have preserved his federal claim. That our decision was based on this foreseeability concern is evident from our discussion of the state court's treatment of the scienter question. This holding was supported by an adequate state ground, we found, because the state statute cited by the Ohio Supreme Court "state[d] that proof of scienter is required in instances, like the present one, where a criminal statute does not specify the applicable mental state." 495 U. S., at 123. In other words, while the recklessness element was foreseeable (and in fact established by statute), the lewdness element was not.

Second, to the extent Ohio faulted the defendant for not raising a more general objection to the jury instructions, *Osborne* followed from *Douglas* v. *Alabama*, 380 U. S., at 420–423. In *Douglas*, the defendant was required to repeat, again and again, the same Confrontation Clause objection while his codefendant's confession was read to the jury. The trial court's initial adverse ruling foreclosed the possibility that the subsequent objections would be sustained. Ohio's treatment of overbreadth objections raised similar concerns. By ruling on and rejecting the pretrial objection—at the time when overbreadth challenges are generally made—the trial court would make its position on lewdness clear. The case would continue on the assumption that the statute was not overbroad and that possession of nonlewd materials could be a criminal offense. Any evidence the defendant introduced to establish that the photographs were not lewd would be irrelevant, and likely objectionable on this ground. As both a logical and a practical matter, then, the ruling at the trial's outset would foreclose a lewdness instruction at the trial's close. Ohio's requirement that the defendant nonetheless make some sort of objection to the jury instructions, as we concluded, served "no perceivable state interest." 495 U. S., at 124 (internal quotation marks omitted). On this point, too, the *Osborne* Court's different conclusion with respect to scienter is enlightening. Osborne did not

argue in an appropriate pretrial motion that the other Ohio statute supplied the recklessness element, so no ruling precluded him from admitting evidence on *mens rea* or requesting a recklessness instruction.

Osborne thus stands for the proposition that once a trial court rejects an overbreadth challenge, the defendant cannot be expected to predict an unforeseeable limiting construction later adopted by the state appellate court or to lodge a foreclosed objection to the jury instructions. That holding, of course, has no relevance to the case at hand. Rule 24.10 does not require defendants to foresee the unforeseeable, and no previous ruling precluded the trial court from granting Lee's continuance motion. And though the *Osborne* Court's analysis was tailored to First Amendment overbreadth concerns, it did not adopt the majority's fact-specific approach. *Osborne*'s rationale would apply to all overbreadth cases without regard to whether their facts were unique or their circumstances were extraordinary. The majority's suggestion to the contrary exaggerates the importance of certain language employed by the *Osborne* Court. We did take note of the "sequence of events," *id.*, at 124, but only because in all overbreadth cases, Ohio procedure mandated a sequence whereby defendants were required to predict unforeseeable limiting constructions before they were adopted or to lodge objections foreclosed by previous rulings. We also mentioned the trial's brevity, *id.*, at 123–124, but that fleeting reference was not only unnecessary but also in tension with the *Osborne* Court's analysis. The adequacy doctrine would have dictated the same result, brief trial or no.

The *Osborne* decision did not lay the groundwork for today's revival of *Henry* v. *Mississippi*. Yet even if it made sense to consider the adequacy of state rules on a case-by-case basis, the Court would be wrong to conclude that enforcement of Rule 24.10 would serve no purpose in this case. Erroneous disregard of state procedural rules will be common under the regime endorsed by the Court today, for its

basic assumption—that the purposes of a particular state procedure can be served by use of a rather different one—ignores the realities of trial. The Court here sweeps aside as unnecessary a rule that would have produced the very predicate the trial court needed to grant the motion: an assurance that the defense witnesses were still prepared to offer material testimony.

The majority contends that Lee compensated for any inadequacies in his motion, even if through inadvertence, by various remarks and observations made during earlier parts of the trial. To reach this conclusion, the Court must construe counsel's statements with a pronounced liberality. Even if we could assume, however, that Lee and his lawyer provided all the required information at some point, we could not conclude that "th[e] purpose of the . . . rule" was "substantially served," *Henry* v. *Mississippi*, 379 U. S., at 448, or, in the terms used by today's majority, that "[t]he Rule's essential requirements . . . were substantially met," *ante*, at 385. The most critical information the Rule requires—"What particular facts the affiant believes the witness will prove"—was revealed not at the time of the motion, but at earlier stages: *voir dire*, opening statements, and perhaps, the majority speculates, the charge conference. *Ante*, at 383–384. To say the essential requirements of Rule 24.10 were met, then, is to assume the requirement that representations be made at the time of the motion is not central to the Rule or its objectives.

This assumption ignores the State's interest in placing all relevant information before the trial court when the motion is made, rather than asking the judge to rely upon his or her memory of earlier statements. Cf. *Ungar* v. *Sarafite*, 376 U. S. 575, 589 (1964) (test for determining whether denial of continuance violated due process considers "particularly . . . the reasons presented to the trial judge at the time the request is denied"). The assumption looks past the State's

corresponding interest in facilitating appellate review by placing all information relevant to the continuance motion in a single place in the record. The assumption also ignores the plain fact that the posture of this case was far different when Lee made his continuance motion than it was at the outset of the trial. Even if the judge recalled the precise details of *voir dire* and opening statements (as the majority believes, see *ante*, at 384), the State's interest in requiring Lee to make the representations after the prosecution rested was no less pronounced.

As the very existence of rules like Rule 24.10 indicates, seasoned trial judges are likely to look upon continuance motions based on the absence of witnesses with a considerable degree of skepticism. This case was no different, for the trial judge suspected that the witnesses had abandoned Lee. The majority is simply wrong to suggest that no one in the courtroom harbored a doubt about what Lee's family members would have said if they had returned. See *ibid.* On the contrary, in light of the witnesses' sudden disappearance, it is more likely that no one in the courtroom would have had any idea what to expect.

The Court fails to recognize that the trial judge was quite capable of distinguishing between counsel's brave promises to the jury at various stages of the trial and what counsel could in fact deliver when the continuance was sought. There is nothing unusual about lawyers using hyperbole in statements to the jury but then using careful and documented arguments when making representations to the court in support of requests for specific rulings. Trial judges must distinguish between the two on a daily basis. In closing argument, for example, defense counsel told the jury:

> "I'm an old man, been in this business 43 years, seen a little of criminal cases. Never seen one as weak as this." Tr. 618.

Quite aside from the prosecutor's predictable response—"He said that in the last case I tried with him too," *id.*, at 620—the rhetoric was an ill fit with the routine, mechanical way defense counsel presented his motion for acquittal, with the jury absent, at the close of the prosecution's case. He gave not one specific reason to grant the motion, his complete argument consisting of the following:

> "MR. McMULLIN: I'll file it. I left it in the office. There's nothing exceptional in it. The defendant—that we move for judgment of acquittal for the reason that the State's evidence is insufficient as a matter of law to sustain a conviction and that should be easily disposed of." *Id.*, at 489.

These are the customary dynamics of trial, perhaps; but the whole course of these proceedings served to confirm what the trial judge told counsel at the outset of the case: "I don't have a lot of faith in what's said in opening statement." *Id.*, at 173. Opening statements can be imprecise, and are sometimes designed to force the opposition's hand or shape the jurors' perception of events. When the time came for presentation of the defense case, counsel faced significant obstacles in establishing the alibi he had promised before. Indeed, it is a fair inference to say the alibi defense had collapsed altogether. Two witnesses with no connection to the defendants or the crime identified Lee as the driver of the automobile used by the passenger-gunman. Any thought that difficulties with these eyewitnesses' identification might give Lee room to present his alibi defense was dispelled by two additional witnesses for the prosecution. Both had known Lee for a considerable period of time, so the chances of mistaken identity were minimal. Both saw him in Kansas City—not in California—on the night before the murder. He was not only in town, they testified, but also with the shooter and looking for the victim.

Faced with this and other evidence adduced by the prosecution, defense counsel elected to open not with the alibi witnesses whose testimony was supposed to be so critical, but rather with two witnesses who attempted to refute a collateral aspect of the testimony given by one of the prosecution's eyewitnesses. Only then did the defense call the alibi witnesses, who were to testify that Lee went to California to attend a birthday party in July 1992 and did not return to Kansas City until October. At this point the case was far different from what defense counsel might have hoped for at the opening.

When Lee's witnesses were then reported missing, the judge had ample reason to believe they had second thoughts about testifying. All three of Lee's family members had traveled from California to testify, but all three left without speaking to Lee or his lawyer. Two sets of witnesses, four persons in all, had just placed Lee in Kansas City; and the prosecution had said it had in reserve other witnesses prepared to rebut the alibi testimony. Lee had been sentenced to 80 years in Missouri prison for an unrelated armed assault and robbery, and any witness who was considering perjury would have had little inducement to take that risk—a risk that would have became more pronounced after the prosecution's witnesses had testified—if Lee would serve a long prison term in any event. The judge's skepticism seems even more justified when it is noted that six weeks later, during a hearing on Lee's motion for a new trial, counsel still did not explain where Lee's family members had gone or why they had left. It was not until 17 months later, in an amended motion for postconviction relief, that Lee first gave the Missouri courts an explanation for his family's disappearance.

Before any careful trial judge granted a continuance in these circumstances, he or she would want a representation that the movant believed the missing witnesses were still prepared to offer the alibi testimony. Cf. *Avery* v. *Ala-*

bama, 308 U. S. 444, 446 (1940) (propriety of continuance, for the purposes of the Fourteenth Amendment, must be "decided by the trial judge in the light of facts then presented and conditions then existing"). If Lee and his counsel had any reason to believe his witnesses had not abandoned him, this representation would not have been difficult to make, and the trial judge would have had reason to credit it. Yet defense counsel was careful at all stages to avoid making this precise representation. In his opening statement he said:

> "We will put on three witnesses for the defense, and you will see them and be able to evaluate them and see whether or not they're liars or not. You can determine for yourself." App. 12.

When he moved for the continuance, Lee's counsel, consistent with his guarded approach, would not say the witnesses would still testify as advertised:

> "THE COURT: The folks were here today. They were seen here on this floor of the courthouse, and they apparently simply have abandoned—
>
> MR. McMULLIN: Well—
>
> THE COURT:—the defendant in—although they're family, despite the fact that they're under subpoena.
>
> MR. McMULLIN: It looks like that, Judge. I don't know. I would—I can neither confirm nor deny." *Id.*, at 22.

No one—not Lee, not his attorney—stood before the court and expressed a belief, as required by Rule 24.10, that the missing witnesses would still testify that Lee had been in California on the night of the murder. Without that assurance, the judge had little reason to believe the continuance would be of any use. In concluding that the purposes of Rule 24.10 were served by promises made in an opening statement, the majority has ignored one of the central purposes of the Rule.

In sum, Rule 24.10 served legitimate state interests, both as a general matter and as applied to the facts of this case. Lee's failure to comply was an adequate state ground, and the Court's contrary determination does not bode well for the adequacy doctrine or federalism.

II

A federal court could consider the merits of Lee's defaulted federal claim if he had shown cause for the default and prejudice therefrom, see *Wainwright* v. *Sykes*, 433 U. S., at 90–91, or made out a compelling case of actual innocence, see *Schlup* v. *Delo*, 513 U. S. 298, 314–315 (1995). He has done neither.

As to the first question, Lee says the sudden disappearance of his witnesses caused him to neglect Rule 24.10. In one sense, of course, he is right, for he would not have requested the continuance, much less failed to comply with Rule 24.10, if his witnesses had not left the courthouse. The argument, though, is unavailing. The cause component of the cause-and-prejudice analysis requires more than a but-for causal relationship between the cause and the default. Lee must also show, given the state of the trial when the motion was made, that an external factor "impeded counsel's efforts to comply with the State's procedural rule." *Murray* v. *Carrier*, 477 U. S. 478, 488 (1986). While the departure of his key witnesses may have taken him by surprise (and caused him not to comply with Rule 24.09's writing requirement), nothing about their quick exit stopped him from making a complete oral motion and explaining their absence, the substance of their anticipated testimony, and its materiality.

Nor has Lee shown that an evidentiary hearing is needed to determine whether "a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Id.*, at 496. To fall within this "narrow class of cases," *McCleskey* v. *Zant*, 499 U. S. 467, 494 (1991), Lee

must demonstrate "that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence." *Schlup* v. *Delo, supra,* at 327, 314–315. Lee would offer the testimony of his mother, stepfather, and sister; but to this day, almost eight years after the trial, Lee has not produced a shred of tangible evidence corroborating their story that he had flown to California to attend a 4-month long birthday party at the time of the murder. To acquit, the jury would have to overlook this problem, ignore the relatives' motive to concoct an alibi for their kin, and discount the prosecution's four eyewitnesses. Even with the relatives' testimony, a reasonable juror could vote to convict.

* * *

"Flying banners of federalism, the Court's opinion actually raises storm signals of a most disquieting nature." So wrote Justice Harlan, dissenting in *Henry* v. *Mississippi,* 379 U. S., at 457. The disruption he predicted failed to spread, not because *Henry*'s approach was sound but because in later cases the Court, heeding his admonition, refrained from following the course *Henry* prescribed. Though the Court disclaims reliance upon *Henry,* it has in fact revived that case's discredited rationale. Serious doubt is now cast upon many state procedural rules and the convictions sustained under them.

Sound principles of federalism counsel against this result. I would affirm the judgment of the Court of Appeals.

Syllabus

KANSAS *v.* CRANE

CERTIORARI TO THE SUPREME COURT OF KANSAS

No. 00–957. Argued October 30, 2001—Decided January 22, 2002

In upholding the constitutionality of the Kansas Sexually Violent Predator Act, this Court characterized a dangerous sexual offender's confinement as civil rather than criminal, *Kansas* v. *Hendricks*, 521 U. S. 346, 369, and held that the confinement criterion embodied in the statute's words "mental abnormality or personality disorder" satisfied substantive due process, *id.*, at 356, 360. Here, the Kansas District Court ordered the civil commitment of respondent Crane, a previously convicted sexual offender. In reversing, the State Supreme Court concluded that *Hendricks* requires a finding that the defendant cannot control his dangerous behavior—even if (as provided by Kansas law) problems of emotional, and not volitional, capacity prove the source of behavior warranting commitment. And the trial court had made no such finding.

Held: *Hendricks* set forth no requirement of *total* or *complete* lack of control, but the Constitution does not permit commitment of the type of dangerous sexual offender considered in *Hendricks* without *any* lack-of-control determination. *Hendricks* referred to the Act as requiring an abnormality or disorder that makes it "*difficult*, if not impossible, for the [dangerous] person to control his dangerous behavior." *Id.*, at 358 (emphasis added). The word "difficult" indicates that the lack of control was not absolute. Indeed, an absolutist approach is unworkable and would risk barring the civil commitment of highly dangerous persons suffering severe mental abnormalities. Yet a distinction between a dangerous sexual offender subject to civil commitment and "other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings," *id.*, at 360, is necessary lest "civil commitment" become a "mechanism for retribution or general deterrence," *id.*, at 372–373. In *Hendricks*, this Court did not give "lack of control" a particularly narrow or technical meaning, and in cases where it is at issue, "inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior. The Constitution's liberty safeguards in the area of mental illness are not always best enforced through precise bright-line rules. States retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment; and psychiatry, which informs but does not control ultimate legal determina-

Syllabus

tions, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law. Consequently, the Court has sought to provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require, the approach embodied in *Hendricks*. That *Hendricks* limited its discussion to volitional disabilities is not surprising, as the case involved pedophilia—a mental abnormality involving what a lay person might describe as a lack of control. But when considering civil commitment, the Court has not ordinarily distinguished for constitutional purposes between volitional, emotional, and cognitive impairments. See, *e. g.*, *Jones* v. *United States*, 463 U. S. 354. The Court in *Hendricks* had no occasion to consider whether confinement based solely on "emotional" abnormality would be constitutional, and has no occasion to do so here. Pp. 410–415.

269 Kan. 578, 7 P. 3d 285, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 415.

Carla J. Stovall, Attorney General of Kansas, argued the cause for petitioner. With her on the briefs was *Stephen R. McAllister*, State Solicitor.

John C. Donham argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *James E. Ryan*, Attorney General of Illinois, *Joel D. Bertocchi*, Solicitor General, and *William L. Browers*, *Lisa Anne Hoffman*, and *Margaret M. O'Connell*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Bill Pryor* of Alabama, *Janet Napolitano* of Arizona, *Bill Lockyer* of California, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Thomas J. Miller* of Iowa, *J. Joseph Curran, Jr.*, of Maryland, *Thomas F. Reilly* of Massachusetts, *Mike Moore* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Don Stenberg* of Nebraska, *John J. Farmer, Jr.*, of New Jersey, *Wayne Stenehjem* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *Christine O. Gregoire* of Washington, and *James E. Doyle* of Wisconsin; for the Association for the Treatment of Sexual Abusers by *John J. Sulli-*

JUSTICE BREYER delivered the opinion of the Court.

This case concerns the constitutional requirements substantively limiting the civil commitment of a dangerous sexual offender—a matter that this Court considered in *Kansas* v. *Hendricks*, 521 U. S. 346 (1997). The State of Kansas argues that the Kansas Supreme Court has interpreted our decision in *Hendricks* in an overly restrictive manner. We agree and vacate the Kansas court's judgment.

I

In *Hendricks*, this Court upheld the Kansas Sexually Violent Predator Act, Kan. Stat. Ann. §59–29a01 *et seq.* (1994), against constitutional challenge. 521 U. S., at 371. In doing so, the Court characterized the confinement at issue as civil, not criminal, confinement. *Id.*, at 369. And it held that the statutory criterion for confinement embodied in the statute's words "mental abnormality or personality disorder" satisfied "'substantive' due process requirements." *Id.*, at 356, 360.

In reaching its conclusion, the Court's opinion pointed out that "States have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety." *Id.*, at 357. It said that "[w]e have consistently upheld such involuntary commitment statutes" when (1) "the confinement takes place pursuant to proper procedures and evidentiary standards," (2) there is a finding of "dangerousness either to one's self or to others," and (3) proof of dangerousness is "coupled . . . with the proof of some additional factor, such as a 'mental illness' or 'mental

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van and *Michael E. Lackey, Jr.*; and for the Washington Legal Foundation et al. by *Daniel J. Popeo* and *Richard A. Samp.*

Briefs of *amici curiae* urging affirmance were filed for the American Psychiatric Association et al. by *Richard G. Taranto*; and for the National Association of Criminal Defense Lawyers et al. by *Jody Manier Kris, Lisa Kemler*, and *Steven R. Shapiro.*

abnormality.'" *Id.*, at 357–358. It noted that the Kansas "Act unambiguously requires a finding of dangerousness either to one's self or to others," *id.*, at 357, and then "links that finding to the existence of a 'mental abnormality' or 'personality disorder' that makes it difficult, if not impossible, for the person to control his dangerous behavior," *id.*, at 358 (citing Kan. Stat. Ann. § 59–29a02(b) (1994)). And the Court ultimately determined that the statute's "requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of . . . other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness." 521 U. S., at 358.

The Court went on to respond to Hendricks' claim that earlier cases had required a finding, not of "mental abnormality" or "personality disorder," but of "mental illness." *Id.*, at 358–359. In doing so, the Court pointed out that we "have traditionally left to legislators the task of defining [such] terms." *Id.*, at 359. It then held that, to "the extent that the civil commitment statutes we have considered set forth criteria relating to an individual's inability to control his dangerousness, the Kansas Act sets forth comparable criteria." *Id.*, at 360. It added that Hendricks' own condition "doubtless satisfies those criteria," for (1) he suffers from pedophilia, (2) "the psychiatric profession itself classifies" that condition "as a serious mental disorder," and (3) Hendricks conceded that he cannot "'control the urge'" to molest children. And it concluded that this "admitted lack of volitional control, coupled with a prediction of future dangerousness, adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." *Ibid.*

II

In the present case the State of Kansas asks us to review the Kansas Supreme Court's application of *Hendricks.* The State here seeks the civil commitment of Michael

Crane, a previously convicted sexual offender who, according to at least one of the State's psychiatric witnesses, suffers from both exhibitionism and antisocial personality disorder. *In re Crane*, 269 Kan. 578, 580–581, 7 P. 3d 285, 287 (2000); cf. also American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 569 (rev. 4th ed. 2000) (DSM–IV) (detailing exhibitionism), 701–706 (detailing antisocial personality disorder). After a jury trial, the Kansas District Court ordered Crane's civil commitment. 269 Kan., at 579–584, 7 P. 3d, at 286–288. But the Kansas Supreme Court reversed. *Id.*, at 586, 7 P. 3d, at 290. In that court's view, the Federal Constitution as interpreted in *Hendricks* insists upon "a finding that the defendant cannot control his dangerous behavior"—even if (as provided by Kansas law) problems of "emotional capacity" and not "volitional capacity" prove the "source of bad behavior" warranting commitment. 269 Kan., at 586, 7 P. 3d, at 290; see also Kan. Stat. Ann. §59–29a02(b) (2000 Cum. Supp.) (defining "[m]ental abnormality" as a condition that affects an individual's emotional *or* volitional capacity). And the trial court had made no such finding.

Kansas now argues that the Kansas Supreme Court wrongly read *Hendricks* as requiring the State *always* to prove that a dangerous individual is *completely* unable to control his behavior. That reading, says Kansas, is far too rigid.

III

We agree with Kansas insofar as it argues that *Hendricks* set forth no requirement of *total* or *complete* lack of control. *Hendricks* referred to the Kansas Act as requiring a "mental abnormality" or "personality disorder" that makes it "*difficult*, if not impossible, for the [dangerous] person to control his dangerous behavior." 521 U. S., at 358 (emphasis added). The word "difficult" indicates that the lack of control to which this Court referred was not absolute. Indeed, as different *amici* on opposite sides of this case agree, an absolutist approach is unworkable. Brief for Association for the

Treatment of Sexual Abusers as *Amicus Curiae* 3; cf. Brief for American Psychiatric Association et al. as *Amici Curiae* 10; cf. also American Psychiatric Association, Statement on the Insanity Defense 11 (1982), reprinted in G. Melton, J. Petrila, N. Poythress, & C. Slobogin, Psychological Evaluations for the Courts 200 (2d ed. 1997) ("'The line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk'"). Moreover, most severely ill people—even those commonly termed "psychopaths"—retain some ability to control their behavior. See Morse, Culpability and Control, 142 U. Pa. L. Rev. 1587, 1634–1635 (1994); cf. Winick, Sex Offender Law in the 1990s: A Therapeutic Jurisprudence Analysis, 4 Psychol. Pub. Pol'y & L. 505, 520–525 (1998). Insistence upon absolute lack of control would risk barring the civil commitment of highly dangerous persons suffering severe mental abnormalities.

We do not agree with the State, however, insofar as it seeks to claim that the Constitution permits commitment of the type of dangerous sexual offender considered in *Hendricks* without *any* lack-of-control determination. See Brief for Petitioner 17; Tr. of Oral Arg. 22, 30–31. *Hendricks* underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil commitment "from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." 521 U. S., at 360. That distinction is necessary lest "civil commitment" become a "mechanism for retribution or general deterrence"—functions properly those of criminal law, not civil commitment. *Id.*, at 372–373 (KENNEDY, J., concurring); cf. also Moran, The Epidemiology of Antisocial Personality Disorder, 34 Social Psychiatry & Psychiatric Epidemiology 231, 234 (1999) (noting that 40%–60% of the male prison population is diagnosable with antisocial personality disorder). The presence of what the "psychiatric profession itself classifie[d] . . . as a serious mental disorder" helped to make that distinction in *Hendricks*. And a critical distinguishing feature of that "serious . . . disorder" there

consisted of a special and serious lack of ability to control behavior.

In recognizing that fact, we did not give to the phrase "lack of control" a particularly narrow or technical meaning. And we recognize that in cases where lack of control is at issue, "inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case. 521 U. S., at 357–358; see also *Foucha* v. *Louisiana*, 504 U. S. 71, 82–83 (1992) (rejecting an approach to civil commitment that would permit the indefinite confinement "of any convicted criminal" after completion of a prison term).

We recognize that *Hendricks* as so read provides a less precise constitutional standard than would those more definite rules for which the parties have argued. But the Constitution's safeguards of human liberty in the area of mental illness and the law are not always best enforced through precise bright-line rules. For one thing, the States retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment. *Hendricks*, 521 U. S., at 359; *id.*, at 374–375 (BREYER, J., dissenting). For another, the science of psychiatry, which informs but does not control ultimate legal determinations, is an ever-advancing science, whose distinctions do not seek precisely to mirror those of the law. See *id.*, at 359. See also, *e. g.*, *Ake* v. *Oklahoma*, 470 U. S. 68, 81 (1985) (psychiatry not "an exact science"); DSM–IV xxx ("concept of mental disorder . . . lacks a consistent operational definition"); *id.*, at xxxii–xxxiii (noting the "imperfect fit between the questions of ultimate concern to the law and

the information contained in [the DSM's] clinical diagnosis"). Consequently, we have sought to provide constitutional guidance in this area by proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require. *Hendricks* embodied that approach.

IV

The State also questions how often a volitional problem lies at the heart of a dangerous sexual offender's serious mental abnormality or disorder. It points out that the Kansas Supreme Court characterized its state statute as permitting commitment of dangerous sexual offenders who (1) suffered from a mental abnormality properly characterized by an "emotional" impairment and (2) suffered no "volitional" impairment. 269 Kan., at 583, 7 P. 3d, at 289. It adds that, in the Kansas court's view, *Hendricks* absolutely forbids the commitment of any such person. 269 Kan., at 585–586, 7 P. 3d, at 290. And the State argues that it was wrong to read *Hendricks* in this way. Brief for Petitioner 11; Tr. of Oral Arg. 5.

We agree that *Hendricks* limited its discussion to volitional disabilities. And that fact is not surprising. The case involved an individual suffering from pedophilia—a mental abnormality that critically involves what a lay person might describe as a lack of control. DSM–IV 571–572 (listing as a diagnostic criterion for pedophilia that an individual have acted on, or been affected by, "sexual urges" toward children). Hendricks himself stated that he could not "'control the urge'" to molest children. 521 U. S., at 360. In addition, our cases suggest that civil commitment of dangerous sexual offenders will normally involve individuals who find it particularly difficult to control their behavior—in the general sense described above. Cf. *Seling* v. *Young*, 531 U. S. 250, 256 (2001); cf. also Abel & Rouleau, Male Sex Offenders, in Handbook of Outpatient Treatment of Adults: Nonpsychotic Mental Disorders 271 (M. Thase,

B. Edelstein, & M. Hersen eds. 1990) (sex offenders' "compulsive, repetitive, driven behavior . . . appears to fit the criteria of an emotional or psychiatric illness"). And it is often appropriate to say of such individuals, in ordinary English, that they are "unable to control their dangerousness." *Hendricks*, *supra*, at 358.

Regardless, *Hendricks* must be read in context. The Court did not draw a clear distinction between the purely "emotional" sexually related mental abnormality and the "volitional." Here, as in other areas of psychiatry, there may be "considerable overlap between a . . . defective understanding or appreciation and . . . [an] ability to control . . . behavior." American Psychiatric Association Statement on the Insanity Defense, 140 Am. J. Psychiatry 681, 685 (1983) (discussing "psychotic" individuals). Nor, when considering civil commitment, have we ordinarily distinguished for constitutional purposes among volitional, emotional, and cognitive impairments. See, *e. g.*, *Jones* v. *United States*, 463 U. S. 354 (1983); *Addington* v. *Texas*, 441 U. S. 418 (1979). The Court in *Hendricks* had no occasion to consider whether confinement based solely on "emotional" abnormality would be constitutional, and we likewise have no occasion to do so in the present case.

* * *

For these reasons, the judgment of the Kansas Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.

Today the Court holds that the Kansas Sexually Violent Predator Act (SVPA) cannot, consistent with so-called substantive due process, be applied as written. It does so even though, less than five years ago, we upheld the very same

statute against the very same contention in an appeal by the very same petitioner (the State of Kansas) from the judgment of the very same court. Not only is the new law that the Court announces today wrong, but the Court's manner of promulgating it—snatching back from the State of Kansas a victory so recently awarded—cheapens the currency of our judgments. I would reverse, rather than vacate, the judgment of the Kansas Supreme Court.

I

Respondent was convicted of lewd and lascivious behavior and pleaded guilty to aggravated sexual battery for two incidents that took place on the same day in 1993. In the first, respondent exposed himself to a tanning salon attendant. In the second, 30 minutes later, respondent entered a video store, waited until he was the only customer present, and then exposed himself to the clerk. Not stopping there, he grabbed the clerk by the neck, demanded she perform oral sex on him, and threatened to rape her, before running out of the store. Following respondent's plea to aggravated sexual battery, the State filed a petition in State District Court to have respondent evaluated and adjudicated a sexual predator under the SVPA. That Act permits the civil detention of a person convicted of any of several enumerated sexual offenses, if it is proven beyond a reasonable doubt that he suffers from a "mental abnormality"—a disorder affecting his "emotional or volitional capacity which predisposes the person to commit sexually violent offenses"—or a "personality disorder," either of "which makes the person likely to engage in repeat acts of sexual violence." Kan. Stat. Ann. §§ 59–29a02(a), (b) (2000 Cum. Supp.).

Several psychologists examined respondent and determined he suffers from exhibitionism and antisocial personality disorder. Though exhibitionism alone would not support classification as a sexual predator, a psychologist concluded that the two in combination did place respondent's condition

within the range of disorders covered by the SVPA, "cit[ing] the increasing frequency of incidents involving [respondent], increasing intensity of the incidents, [respondent's] increasing disregard for the rights of others, and his increasing daring and aggressiveness." *In re Crane*, 269 Kan. 578, 579, 7 P. 3d 285, 287 (2000). Another psychologist testified that respondent's behavior was marked by "impulsivity or failure to plan ahead," indicating his unlawfulness "was a combination of willful and uncontrollable behavior," *id.*, at 584–585, 7 P. 3d, at 290. The State's experts agreed, however, that "'[r]espondent's mental disorder does not impair his volitional control to the degree he cannot control his dangerous behavior.'" *Id.*, at 581, 7 P. 3d, at 288.

Respondent moved for summary judgment, arguing that for his detention to comport with substantive due process the State was required to prove not merely what the statute requires—that by reason of his mental disorder he is "likely to engage in repeat acts of sexual violence"—but also that he is unable to control his violent behavior. The trial court denied this motion, and instructed the jury pursuant to the terms of the statute. *Id.*, at 581, 7 P. 3d, at 287–288. The jury found, beyond a reasonable doubt, that respondent was a sexual predator as defined by the SVPA. The Kansas Supreme Court reversed, holding the SVPA unconstitutional as applied to someone, like respondent, who has only an emotional or personality disorder within the meaning of the Act, rather than a volitional impairment. For such a person, it held, the State must show not merely a likelihood that the defendant would engage in repeat acts of sexual violence, but also an inability to control violent behavior. It based this holding solely on our decision in *Kansas* v. *Hendricks*, 521 U. S. 346 (1997).

II

Hendricks also involved the SVPA, and, as in this case, the Kansas Supreme Court had found that the SVPA swept too broadly. On the basis of considerable evidence show-

ing that Hendricks suffered from pedophilia, the jury had found, beyond a reasonable doubt, that Hendricks met the statutory standard for commitment. See *id.*, at 355; *In re Hendricks*, 259 Kan. 246, 247, 912 P. 2d 129, 130 (1996). This standard (to repeat) was that he suffered from a "mental abnormality"—a disorder affecting his "emotional or volitional capacity which predisposes [him] to commit sexually violent offenses"—or a "personality disorder," either of which "makes [him] likely to engage in repeat acts of sexual violence." Kan. Stat. Ann. §§ 59–29a02(a), (b) (2000 Cum. Supp.). The trial court, after determining as a matter of state law that pedophilia was a "mental abnormality" within the meaning of the Act, ordered Hendricks committed. See 521 U. S., at 355–356. The Kansas Supreme Court held the jury finding to be constitutionally inadequate. "Absent . . . a finding [of mental illness]," it said, "the Act does not satisfy . . . constitutional standard[s]," 259 Kan., at 261, 912 P. 2d, at 138. (Mental illness, as it had been defined by Kansas law, required a showing that the detainee "[i]s suffering from a severe mental disorder"; "lacks capacity to make an informed decision concerning treatment"; and "is likely to cause harm to self or others." Kan. Stat. Ann. § 59–2902(h) (1994).) We granted the State of Kansas's petition for certiorari.

The first words of our opinion dealing with the merits of the case were as follows: "Kansas argues that the Act's definition of 'mental abnormality' satisfies 'substantive' due process requirements. We agree." *Hendricks*, 521 U. S., at 356. And the *reason* it found substantive due process satisfied was clearly stated:

> "The Kansas Act is plainly of a kind with these other civil commitment statutes [that we have approved]: It requires a finding of future dangerousness [viz., that the person committed is "likely to engage in repeat acts of sexual violence"], and then links that finding to the existence of a 'mental abnormality' or 'person-

> ality disorder' *that makes it difficult, if not impossible, for the person to control his dangerous behavior.* Kan. Stat. Ann. § 59–29a02(b) (1994)." *Id.*, at 358 (emphasis added).

It is the italicized language in the foregoing excerpt that today's majority relies upon as establishing the requirement of a separate *finding* of inability to control behavior. *Ante*, at 411–412.

That is simply not a permissible reading of the passage, for several reasons. First, because the authority cited for the statement—in the immediately following reference to the Kansas Statutes Annotated—is the section of the SVPA that defines "mental abnormality," *which contains no requirement of inability to control.** What the opinion was obviously saying was that the SVPA's required finding of a *causal connection* between the likelihood of repeat acts of sexual violence and the existence of a "mental abnormality" or "personality disorder" *necessarily* establishes "difficulty if not impossibility" in controlling behavior. This is clearly confirmed by the very next sentence of the opinion, which reads as follows:

> "The precommitment requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of . . . other statutes that we have upheld in that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness." 521 U. S., at 358.

It could not be clearer that, in the Court's estimation, the very existence of a mental abnormality or personality dis-

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*As quoted earlier in the *Hendricks* opinion, see 521 U. S., at 352, § 59–29a02(b) defines "mental abnormality" as a "congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others."

order *that causes* a likelihood of repeat sexual violence in itself *establishes* the requisite "difficulty if not impossibility" of control. Moreover, the passage in question cannot possibly be read as today's majority would read it because nowhere did the jury verdict of commitment that we reinstated in *Hendricks* contain a separate finding of "difficulty, if not impossibility, to control behavior." That finding must (as I have said) have been embraced within the finding of mental abnormality *causing* future dangerousness. And finally, the notion that the Constitution requires in every case a finding of "difficulty if not impossibility" of control does not fit comfortably with the broader holding of *Hendricks*, which was that "we have never required state legislatures to adopt any particular nomenclature in drafting civil commitment statutes. Rather, we have traditionally left to legislators the task of defining terms of a medical nature that have legal significance." *Id.*, at 359.

The Court relies upon the fact that "*Hendricks* underscored the constitutional importance of distinguishing a dangerous sexual offender subject to civil commitment 'from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings.'" *Ante*, at 412 (quoting 521 U. S., at 360). But the SVPA as written—without benefit of a supplemental control finding—already achieves that objective. It conditions civil commitment not upon a mere finding that the sex offender is likely to reoffend, but only upon the additional finding (beyond a reasonable doubt) that the *cause* of the likelihood of recidivism is a "mental abnormality or personality disorder." Kan. Stat. Ann. §59–29a02(a) (2000 Cum. Supp.). Ordinary recidivists *choose* to reoffend and are therefore amenable to deterrence through the criminal law; those subject to civil commitment under the SVPA, because their mental illness is an affliction and not a choice, are unlikely to be deterred. We specifically pointed this out in *Hendricks*. "Those persons committed under the Act," we said,

"are, by definition, suffering from a 'mental abnormality' or a 'personality disorder' that prevents them from exercising adequate control over their behavior. Such persons are therefore unlikely to be deterred by the threat of confinement." 521 U. S., at 362–363.

III

Not content with holding that the SVPA cannot be applied as written because it does not require a separate "lack-of-control determination," *ante*, at 412, the Court also reopens a question closed by *Hendricks:* whether the SVPA also cannot be applied as written because it allows for the commitment of people who have mental illnesses other than volitional impairments. "*Hendricks*," the Court says, "had no occasion to consider" this question. *Ante*, at 415.

But how could the Court possibly have avoided it? The jury whose commitment we affirmed in *Hendricks* had not been asked to find a volitional impairment, but had been charged in the language of the statute, which quite clearly covers nonvolitional impairments. And the fact that it did so had not escaped our attention. To the contrary, our *Hendricks* opinion explicitly and repeatedly recognized that the SVPA reaches individuals with personality disorders, 521 U. S., at 352, 353, 357, 358, and quoted the Act's definition of mental abnormality (§ 59–29a02(b)), which makes plain that it embraces both emotional and volitional impairments, *id.*, at 352. It is true that we repeatedly referred to Hendricks's "volitional" problems—because that was evidently the sort of mental abnormality that he had. But we nowhere accorded any legal significance to that fact—as we could not have done, since it was not a fact that the jury had been asked to determine. We held, without any qualification, "that the Kansas Sexually Violent Predator Act comports with [substantive] due process requirements," *id.*, at 371, because its "precommitment requirement of a 'mental abnormality' or 'personality disorder' is consistent with the requirements of . . . other statutes that we have upheld in

that it narrows the class of persons eligible for confinement to those who are unable to control their dangerousness," *id.*, at 358.

The Court appears to argue that, because *Hendricks* involved a defendant who indeed *had* a volitional impairment (even though we made nothing of that fact), its narrowest holding covers only *that* application of the SVPA, and our statement that the SVPA in its entirety was constitutional can be ignored. See *ante*, at 414–415. This cannot be correct. The narrowest holding of *Hendricks* affirmed the constitutionality of commitment on the basis of the jury charge given in that case (to wit, the language of the SVPA); and since that charge did not require a finding of volitional impairment, neither does the Constitution.

I cannot resist observing that the distinctive status of volitional impairment which the Court mangles *Hendricks* to preserve would not even be worth preserving by more legitimate means. There is good reason why, as the Court accurately says, "when considering civil commitment . . . we [have not] ordinarily distinguished for constitutional purposes among volitional, emotional, and cognitive impairments," *ante*, at 415. We have not done so because it makes no sense. It is obvious that a person may be able to exercise volition and yet be unfit to turn loose upon society. The man who has a will of steel, but who delusionally believes that every woman he meets is inviting crude sexual advances, is surely a dangerous sexual predator.

IV

I not only disagree with the Court's gutting of our holding in *Hendricks;* I also doubt the desirability, and indeed even the coherence, of the new constitutional test which (on the basis of no analysis except a misreading of *Hendricks*) it substitutes. Under our holding in *Hendricks*, a jury in an SVPA commitment case would be required to find, beyond a reasonable doubt, (1) that the person previously

convicted of one of the enumerated sexual offenses is suffering from a mental abnormality or personality disorder, and (2) that this condition renders him likely to commit future acts of sexual violence. Both of these findings are coherent, and (with the assistance of expert testimony) well within the capacity of a normal jury. Today's opinion says that the Constitution requires the addition of a third finding: (3) that the subject suffers from an inability to control behavior—not utter inability, *ante*, at 411, and not even inability in a particular constant degree, but rather inability in a degree that will vary "in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself," *ante*, at 413.

This formulation of the new requirement certainly displays an elegant subtlety of mind. Unfortunately, it gives trial courts, in future cases under the many commitment statutes similar to Kansas's SVPA, *not a clue* as to how they are supposed to charge the jury! Indeed, it does not even provide a clue to the trial court, on remand, *in this very case*. What is the judge to ask the jury to find? It is fine and good to talk about the desirability of our "proceeding deliberately and contextually, elaborating generally stated constitutional standards and objectives as specific circumstances require," *ante*, at 414, but one would think that this plan would at least produce the "elaboration" of what the jury charge should be in the "specific circumstances" of the present case. "[P]roceeding deliberately" is not synonymous with not proceeding at all.

I suspect that the reason the Court avoids any elaboration is that elaboration which passes the laugh test is impossible. How *is* one to frame for a jury the degree of "inability to control" which, in the particular case, "the nature of the psychiatric diagnosis, and the severity of the mental abnormality" require? Will it be a percentage ("Ladies and gentlemen of the jury, you may commit Mr. Crane under the SVPA only if you find, beyond a reasonable doubt, that he

is 42% unable to control his penchant for sexual violence")? Or a frequency ratio ("Ladies and gentlemen of the jury, you may commit Mr. Crane under the SVPA only if you find, beyond a reasonable doubt, that he is unable to control his penchant for sexual violence 3 times out of 10")? Or merely an adverb ("Ladies and gentlemen of the jury, you may commit Mr. Crane under the SVPA only if you find, beyond a reasonable doubt, that he is appreciably—or moderately, or substantially, or almost totally—unable to control his penchant for sexual violence")? None of these seems to me satisfactory.

But if it is indeed possible to "elaborate" upon the Court's novel test, surely the Court has an obligation to do so in the "specific circumstances" of the present case, so that the trial court will know what is expected of it on remand. It is irresponsible to leave the law in such a state of utter indeterminacy.

* * *

Today's holding would make bad law in any circumstances. In the circumstances under which it is pronounced, however, it both distorts our law and degrades our authority. The State of Kansas, unable to apply its legislature's sexual predator legislation as written because of the Kansas Supreme Court's erroneous view of the Federal Constitution, sought and received certiorari in *Hendricks*, and achieved a reversal, in an opinion holding that "the Kansas Sexually Violent Predator Act comports with [substantive] due process requirements," 521 U. S., at 371. The Kansas Supreme Court still did not like the law and prevented its operation, on substantive due process grounds, once again. The State of Kansas again sought certiorari, asking nothing more than reaffirmation of our 5-year-old opinion—only to be told that what we said then we now unsay. There is an obvious lesson here for state supreme courts that do not agree with our jurisprudence: ignoring it is worth a try.

A jury determined beyond a reasonable doubt that respondent suffers from antisocial personality disorder combined with exhibitionism, and that this is either a mental abnormality or a personality disorder making it likely he will commit repeat acts of sexual violence. That is all the SVPA requires, and all the Constitution demands. Since we have already held precisely that in another case (which, by a remarkable feat of jurisprudential jujitsu the Court relies upon as the only authority for its decision), I would reverse the judgment below.

Syllabus

OWASSO INDEPENDENT SCHOOL DISTRICT NO. I–011, AKA OWASSO PUBLIC SCHOOLS, ET AL. *v.* FALVO, PARENT AND NEXT FRIEND OF HER MINOR CHILDREN, PLETAN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 00–1073. Argued November 27, 2001—Decided February 19, 2002

Teachers sometimes ask students, including respondent's children, to score each other's tests, papers, and assignments as the teachers explain the correct answers to the entire class. Claiming that such "peer grading" violates the Family Educational Rights and Privacy Act of 1974 (FERPA or Act), respondent filed a 42 U. S. C. § 1983 action against the school district and school officials (petitioners). FERPA, *inter alia*, authorizes federal funds to be withheld from school districts that permit students' "education records (or personally identifiable information contained therein . . .)" to be released without their parents' written consent, 20 U. S. C. § 1232g(b)(1); and defines education records as "records, files, documents, and other materials" containing information directly related to a student, which "are maintained by an educational agency or institution or by a person acting for such agency or institution," § 1232(a)(4)(A). In granting petitioners summary judgment, the District Court held that grades put on papers by another student are not "education records." The Tenth Circuit reversed, holding that FERPA provided respondent with a cause of action enforceable under § 1983, and finding that grades marked by students on each other's work are "education records," so the very act of grading is an impermissible release of information to the student grader.

Held: Peer grading does not violate FERPA. Pp. 430–436.

(a) This Court assumes, without deciding, that FERPA provides private parties with a cause of action enforceable under § 1983. Though that question is left open, the Court has subject-matter jurisdiction here because respondent's federal claim is not so completely devoid of merit as not to involve a federal controversy. Pp. 430–431.

(b) Petitioners and the United States contend that education records include only institutional records, *e. g.*, student grade point averages, standardized test scores, and records of disciplinary actions. But respondent, adopting the Tenth Circuit's reasoning, contends that an assignment satisfies § 1232(a)(4)(A)'s definition as soon as another student grades it. That court determined that teachers' grade books and the grades within are "maintained" by the teacher and thus covered by the

Syllabus

Act. The court recognized that teachers do not maintain the grades on individual student assignments until they have recorded them in the grade books. It reasoned, however, that if the teacher cannot disclose the grades once written in the grade book, it makes no sense to permit disclosure immediately beforehand. The court thus held that student graders maintain the grades until they are reported to the teacher. Two statutory indicators show that the Tenth Circuit erred. First, student papers are not, at that stage, "maintained" under § 1232(a)(4)(A). That word's ordinary meaning is to preserve or retain. Even assuming that a grade book is an education record, the score on a student-graded assignment is not "contained therein," § 1232g(b)(1), until the teacher records it. "Maintain" suggests FERPA records will be kept in a file in a school's record room or on a secure database, but student graders only handle assignments for a few moments as the teacher calls out the answers. The Tenth Circuit also erred in concluding that a student grader is "a person acting for" an educational institution, § 1232g(a)(4)(A). That phrase connotes agents of the school. Just as it would be awkward to say students are acting for the institution when following their teacher's instruction to take a quiz, it is equally awkward to say they are acting for the institution when following their teacher's direction to score it. That process can be as much a part of the assignment as taking the test itself. This Court does not think FERPA prohibits such educational techniques. Moreover, saying that students are acting for the teacher in grading an assignment is different from saying they are acting for an educational institution in maintaining it. Other FERPA sections—*e. g.*, § 1232g(b)(4)(A), which requires educational institutions to maintain a record of access kept with the student's education records—support this Court's interpretation. The instant holding is limited to the narrow point that, assuming a teacher's grade book is an education record, grades on students' papers are not covered by the Act at least until the teacher has recorded them. The Court does not reach the broader question whether the Act protects grades on individual assignments once they are turned in to teachers. Pp. 431–436.

233 F. 3d 1203, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. 436.

Jerry A. Richardson argued the cause for petitioners. With him on the briefs was *Karen L. Long.*

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging reversal. With

him on the brief were *Solicitor General Olson, Acting Assistant Attorney General Schiffer, Beth S. Brinkmann, Mark B. Stern,* and *Colette G. Matzzie.*

Will K. Wright, Jr., argued the cause for respondent. With him on the brief were *John W. Whitehead* and *Steven H. Aden.**

JUSTICE KENNEDY delivered the opinion of the Court.

Teachers sometimes ask students to score each other's tests, papers, and assignments as the teacher explains the correct answers to the entire class. Respondent contends this practice, which the parties refer to as peer grading, violates the Family Educational Rights and Privacy Act of 1974 (FERPA or Act), 88 Stat. 571, 20 U. S. C. § 1232g. We took this case to resolve the issue.

I

Under FERPA, schools and educational agencies receiving federal financial assistance must comply with certain conditions. § 1232g(a)(3). One condition specified in the Act is that sensitive information about students may not be released without parental consent. The Act states that federal funds are to be withheld from school districts that have "a policy or practice of permitting the release of education records (or personally identifiable information contained

*Briefs of *amici curiae* urging reversal were filed for the National Education Association et al. by *Robert H. Chanin* and *Andrew D. Roth;* for the National School Boards Association et al. by *Julie Underwood, Julie E. Lewis, Sheldon E. Steinbach,* and *Martin Michaelson;* for the Oklahoma Education Association by *Richard B. Wilkinson* and *Brandon R. Webb;* and for the Reporters Committee for Freedom of the Press et al. by *Gregg P. Leslie, Lucy A. Dalglish,* and *S. Mark Goodman.*

Briefs of *amici curiae* urging affirmance were filed for the Capitol Resource Institute et al. by *Richard D. Ackerman* and *Gary G. Kreep;* for the Council of Counseling Psychology Training Programs et al. by *Dennis Owens;* and for the Eagle Forum Education & Legal Defense Fund by *Karen Tripp* and *Phyllis Schlafly.*

therein . . .) of students without the written consent of their parents." § 1232g(b)(1). The phrase "education records" is defined, under the Act, as "records, files, documents, and other materials" containing information directly related to a student, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." § 1232g(a)(4)(A). The definition of education records contains an exception for "records of instructional, supervisory, and administrative personnel . . . which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." § 1232g(a)(4)(B)(i). The precise question for us is whether peer-graded classroom work and assignments are education records.

Three of respondent Kristja J. Falvo's children are enrolled in Owasso Independent School District No. I–011, in a suburb of Tulsa, Oklahoma. The children's teachers, like many teachers in this country, use peer grading. In a typical case the students exchange papers with each other and score them according to the teacher's instructions, then return the work to the student who prepared it. The teacher may ask the students to report their own scores. In this case it appears the student could either call out the score or walk to the teacher's desk and reveal it in confidence, though by that stage, of course, the score was known at least to the one other student who did the grading. Both the grading and the system of calling out the scores are in contention here.

Respondent claimed the peer grading embarrassed her children. She asked the school district to adopt a uniform policy banning peer grading and requiring teachers either to grade assignments themselves or at least to forbid students from grading papers other than their own. The school district declined to do so, and respondent brought a class action pursuant to Rev. Stat. § 1979, 42 U. S. C. § 1983 (1994 ed., Supp. V), against the school district, Superintendent Dale

Johnson, Assistant Superintendent Lynn Johnson, and Principal Rick Thomas (petitioners). Respondent alleged the school district's grading policy violated FERPA and other laws not relevant here. The United States District Court for the Northern District of Oklahoma granted summary judgment in favor of the school district's position. The court held that grades put on papers by another student are not, at that stage, records "maintained by an educational agency or institution or by a person acting for such agency or institution," 20 U. S. C. § 1232g(a)(4)(A), and thus do not constitute "education records" under the Act. On this reasoning it ruled that peer grading does not violate FERPA.

The Court of Appeals for the Tenth Circuit reversed. 233 F. 3d 1203 (2000). FERPA is directed to the conditions schools must meet to receive federal funds, and as an initial matter the court considered whether the Act confers a private right of action upon students and parents if the conditions are not met. Despite the absence of an explicit authorization in the Act conferring a cause of action on private parties, the court held respondent could sue to enforce FERPA's terms under 42 U. S. C. § 1983. 233 F. 3d, at 1211–1213. Turning to the merits, the Court of Appeals held that peer grading violates the Act. The grades marked by students on each other's work, it held, are education records protected by the statute, so the very act of grading was an impermissible release of the information to the student grader. *Id.*, at 1216.

We granted certiorari to decide whether peer grading violates FERPA. 533 U. S. 927 (2001). Finding no violation of the Act, we reverse.

II

At the outset, we note it is an open question whether FERPA provides private parties, like respondent, with a cause of action enforceable under § 1983. We have granted certiorari on this issue in another case. See *Gonzaga Univ.* v. *Doe*, *post*, p. 1103. The parties, furthermore, did

not contest the § 1983 issue before the Court of Appeals. That court raised the issue *sua sponte*, and petitioners did not seek certiorari on the question. We need not resolve the question here as it is our practice "to decide cases on the grounds raised and considered in the Court of Appeals and included in the question on which we granted certiorari." *Bragdon* v. *Abbott*, 524 U. S. 624, 638 (1998). In these circumstances we assume, but without so deciding or expressing an opinion on the question, that private parties may sue an educational agency under § 1983 to enforce the provisions of FERPA here at issue. Though we leave open the § 1983 question, the Court has subject-matter jurisdiction because respondent's federal claim is not so "completely devoid of merit as not to involve a federal controversy." *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89 (1998) (citation omitted). With these preliminary observations concluded, we turn to the merits.

The parties appear to agree that if an assignment becomes an education record the moment a peer grades it, then the grading, or at least the practice of asking students to call out their grades in class, would be an impermissible release of the records under § 1232g(b)(1). Tr. of Oral Arg. 21. Without deciding the point, we assume for the purposes of our analysis that they are correct. The parties disagree, however, whether peer-graded assignments constitute education records at all. The papers do contain information directly related to a student, but they are records under the Act only when and if they "are maintained by an educational agency or institution or by a person acting for such agency or institution." § 1232g(a)(4)(A).

Petitioners, supported by the United States as *amicus curiae*, contend the definition covers only institutional records—namely, those materials retained in a permanent file as a matter of course. They argue that records "maintained by an educational agency or institution" generally would include final course grades, student grade point averages,

standardized test scores, attendance records, counseling records, and records of disciplinary actions—but not student homework or classroom work. Brief for Petitioners 17; Brief for United States as *Amicus Curiae* 14.

Respondent, adopting the reasoning of the Court of Appeals, contends student-graded assignments fall within the definition of education records. That definition contains an exception for "records of instructional, supervisory, and administrative personnel . . . which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." § 1232g(a)(4)(B)(i). The Court of Appeals reasoned that if grade books are not education records, then it would have been unnecessary for Congress to enact the exception. Grade books and the grades within, the court concluded, are "maintained" by a teacher and so are covered by FERPA. 233 F. 3d, at 1215. The court recognized that teachers do not maintain the grades on individual student assignments until they have recorded the result in the grade books. It reasoned, however, that if Congress forbids teachers to disclose students' grades once written in a grade book, it makes no sense to permit the disclosure immediately beforehand. *Id.*, at 1216. The court thus held that student graders maintain the grades until they are reported to the teacher. *Ibid.*

The Court of Appeals' logic does not withstand scrutiny. Its interpretation, furthermore, would effect a drastic alteration of the existing allocation of responsibilities between States and the National Government in the operation of the Nation's schools. We would hesitate before interpreting the statute to effect such a substantial change in the balance of federalism unless that is the manifest purpose of the legislation. This principle guides our decision.

Two statutory indicators tell us that the Court of Appeals erred in concluding that an assignment satisfies the definition of education records as soon as it is graded by another student. First, the student papers are not, at that stage,

"maintained" within the meaning of § 1232g(a)(4)(A). The ordinary meaning of the word "maintain" is "to keep in existence or continuance; preserve; retain." Random House Dictionary of the English Language 1160 (2d ed. 1987). Even assuming the teacher's grade book is an education record—a point the parties contest and one we do not decide here—the score on a student-graded assignment is not "contained therein," § 1232g(b)(1), until the teacher records it. The teacher does not maintain the grade while students correct their peers' assignments or call out their own marks. Nor do the student graders maintain the grades within the meaning of § 1232g(a)(4)(A). The word "maintain" suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled. The student graders only handle assignments for a few moments as the teacher calls out the answers. It is fanciful to say they maintain the papers in the same way the registrar maintains a student's folder in a permanent file.

The Court of Appeals was further mistaken in concluding that each student grader is "a person acting for" an educational institution for purposes of § 1232g(a)(4)(A). 233 F. 3d, at 1216. The phrase "acting for" connotes agents of the school, such as teachers, administrators, and other school employees. Just as it does not accord with our usual understanding to say students are "acting for" an educational institution when they follow their teacher's direction to take a quiz, it is equally awkward to say students are "acting for" an educational institution when they follow their teacher's direction to score it. Correcting a classmate's work can be as much a part of the assignment as taking the test itself. It is a way to teach material again in a new context, and it helps show students how to assist and respect fellow pupils. By explaining the answers to the class as the students correct the papers, the teacher not only reinforces the lesson but also discovers whether the students have understood

the material and are ready to move on. We do not think FERPA prohibits these educational techniques. We also must not lose sight of the fact that the phrase "by a person acting for [an educational] institution" modifies "maintain." Even if one were to agree students are acting for the teacher when they correct the assignment, that is different from saying they are acting for the educational institution in maintaining it.

Other sections of the statute support our interpretation. See *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"). FERPA, for example, requires educational institutions to "maintain a record, kept with the education records of each student." § 1232g(b)(4)(A). This record must list those who have requested access to a student's education records and their reasons for doing so. *Ibid.* The record of access "shall be available only to parents, [and] to the school official and his assistants who are responsible for the custody of such records." *Ibid.*

Under the Court of Appeals' broad interpretation of education records, every teacher would have an obligation to keep a separate record of access for each student's assignments. Indeed, by that court's logic, even students who grade their own papers would bear the burden of maintaining records of access until they turned in the assignments. We doubt Congress would have imposed such a weighty administrative burden on every teacher, and certainly it would not have extended the mandate to students.

Also, FERPA requires "a record" of access for each pupil. This single record must be kept "with the education records." This suggests Congress contemplated that education records would be kept in one place with a single record of access. By describing a "school official" and "his assistants" as the personnel responsible for the custody of the records,

FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar, not individual assignments handled by many student graders in their separate classrooms.

FERPA also requires recipients of federal funds to provide parents with a hearing at which they may contest the accuracy of their child's education records. § 1232g(a)(2). The hearings must be conducted "in accordance with regulations of the Secretary," *ibid.*, which in turn require adjudication by a disinterested official and the opportunity for parents to be represented by an attorney. 34 CFR § 99.22 (2001). It is doubtful Congress would have provided parents with this elaborate procedural machinery to challenge the accuracy of the grade on every spelling test and art project the child completes.

Respondent's construction of the term "education records" to cover student homework or classroom work would impose substantial burdens on teachers across the country. It would force all instructors to take time, which otherwise could be spent teaching and in preparation, to correct an assortment of daily student assignments. Respondent's view would make it much more difficult for teachers to give students immediate guidance. The interpretation respondent urges would force teachers to abandon other customary practices, such as group grading of team assignments. Indeed, the logical consequences of respondent's view are all but unbounded. At argument, counsel for respondent seemed to agree that if a teacher in any of the thousands of covered classrooms in the Nation puts a happy face, a gold star, or a disapproving remark on a classroom assignment, federal law does not allow other students to see it. Tr. of Oral Arg. 40.

We doubt Congress meant to intervene in this drastic fashion with traditional state functions. Under the Court of Appeals' interpretation of FERPA, the federal power would exercise minute control over specific teaching methods and

instructional dynamics in classrooms throughout the country. The Congress is not likely to have mandated this result, and we do not interpret the statute to require it.

For these reasons, even assuming a teacher's grade book is an education record, the Court of Appeals erred, for in all events the grades on students' papers would not be covered under FERPA at least until the teacher has collected them and recorded them in his or her grade book. We limit our holding to this narrow point, and do not decide the broader question whether the grades on individual student assignments, once they are turned in to teachers, are protected by the Act.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court that peer-graded student papers do not constitute "education records" while they remain in the possession of the peer grader because, as the Court explains, a student who grades another's work is not "a person acting for" the school in the ordinary meaning of that phrase. *Ante*, at 432, 433. I cannot agree, however, with the other ground repeatedly suggested by the Court: that education records include only documents kept in some central repository at the school. *Ante*, at 433 ("The word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database . . . . It is fanciful to say [student graders] maintain the papers in the same way the registrar maintains a student's folder in a permanent file"), 435 ("FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar . . .").

As the Court acknowledges, *ante*, at 429, 432, Congress expressly excluded from the coverage of FERPA "records of

instructional . . . personnel . . . which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute," 20 U. S. C. § 1232g(a)(4)(B)(i). Respondent argues that this exception, which presumably encompasses many documents a teacher might create and keep in the classroom, including a grade book, would be rendered superfluous if education records included only "institutional records kept by a single central custodian, such as a registrar." We do not, of course, read statutes in such fashion as to render entire provisions inoperative. *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 35–36 (1992).

The Court does not explain why respondent's argument is not correct, and yet continues to rely upon the "central custodian" principle that seemingly renders the exception for "records of instructional . . . personnel" superfluous. Worse still, while thus relying upon a theory that plainly excludes teachers' grade books, the Court protests that it is not deciding whether grade books are education records, *ante*, at 433. In my view, the Court's endorsement of a "central custodian" theory of records is unnecessary for the decision of this case, seemingly contrary to § 1232g(a)(4)(B)(i), and (when combined with the Court's disclaimer of any view upon the status of teachers' grade books) incurably confusing. For these reasons, I concur only in the judgment of the Court.

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BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* SIGMON COAL CO., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 00–1307. Argued November 7, 2001—Decided February 19, 2002

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act) restructured the system for providing private health care benefits to coal industry retirees. The Act merged the 1950 and 1974 Benefit Plans—which were created pursuant to collective-bargaining agreements between the United Mine Workers of America (UMWA) and coal operators—into a new multiemployer plan called the UMWA Combined Benefit Fund (Combined Fund). See 26 U. S. C. § 9702(a). That fund is financed by annual premiums assessed against "signatory coal operators," *i. e.*, those who signed any agreement requiring contributions to the 1950 or 1974 Benefit Plans. Where the signatory is no longer in business, the Act assigns liability for beneficiaries to a defined group of "related persons." See §§ 9706(a), 9701(c)(2), (7). The Act charges the Commissioner of Social Security with assigning each eligible beneficiary to a signatory operator or its related persons, § 9706(a); identifies specific categories of signatory operators (and their related persons) and requires the Commissioner to assign beneficiaries among these categories in a particular order, *ibid.*; and ensures that if a beneficiary remains unassigned because no existing company falls within the categories, benefits will be financed by the Combined Fund, see §§ 9704(a), (d), 9705(b). Shortly after respondent Jericol Mining, Inc. (Jericol), was formed in 1973 as Irdell Mining, Inc., Irdell and another company purchased the coal mining operating assets of Shackleford Coal Co., which was a signatory to a coal wage agreement while it was in business. Among other things, they assumed responsibility for Shackleford's collective-bargaining agreement with the UMWA. There was no common ownership between Irdell and Shackleford. Irdell subsequently changed its name, operating as the Shackleford Coal Co. until 1977, when it again changed its name to Jericol. Between 1993 and 1997, the Commissioner assigned premium responsibility for 86 retired miners to Jericol under § 9706(a)(3), determining that as a "successor" or "successor in interest" to the original Shackleford, Jericol qualified as a "related person" to Shackleford. All of these retirees had worked for Shackleford, but none of them had actually worked for Jericol. Jericol and respondent Sigmon Coal Company, Inc., a person related to Jericol under

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§ 9701(c)(2), filed suit against the Commissioner. The District Court granted them summary judgment, concluding that the Act's classification regime does not provide for the liability of successors of defunct signatory operators. In affirming, the Fourth Circuit concluded that the Act was clear and unambiguous and that the court was bound to read it exactly as it was written, and held, *inter alia*, that Jericol was not a "related person" to Shackleford and thus could not be held responsible for Shackleford's miners.

Held: The Coal Act does not permit the Commissioner to assign retired miners to the successors in interest of out-of-business signatory operators. Pp. 450–462.

1. Because the Act is explicit as to who may be assigned liability for beneficiaries and neither the "related persons" provision nor any other provision states that successors in interest to these signatory operators may be assigned liability, the Act's plain language necessarily precludes the Commissioner from assigning the disputed miners to Jericol. Where, as here, the statutory language is unambiguous, the inquiry ceases. See, *e. g.*, *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 240. Since the retirees at issue were Shackleford employees, the "signatory operator" that sold its assets to Jericol (then-Irdell) in 1973, the Commissioner can only assign the beneficiaries to Jericol if it is a "related person" to Shackleford under § 9706(a). Section 9701(c)(2) states that "[a] person shall be considered to be a related person to a signatory operator if that person is—" "(i) a member of the controlled group of corporations . . . which includes [the] signatory operator"; "(ii) a trade or business . . . under common control . . . with such signatory operator"; or "(iii) any other person who [has] a partnership interest or joint venture with a signatory operator" with some exceptions. A related person also includes "a successor in interest of any person described in clause (i), (ii), or (iii)." There is no contention that Jericol was ever a member of a controlled group of corporations including Shackleford, that it was ever a business under common control with Shackleford, or that it ever had a partnership interest or engaged in a joint venture with Shackleford. Therefore, liability for these beneficiaries may attach to Jericol only if it is a successor in interest to an entity described in §§ 9701(c)(2)(A)(i)–(iii). Because Jericol is a successor in interest only to Shackleford, Jericol will be liable only if a signatory operator itself, here Shackleford, falls within one of these categories. None of the three categories, however, includes the signatory operator itself. Nor should such inclusion be inferred, since it is a general principle of statutory construction that when one statutory section includes particular language that is omitted in another section of the

same Act, it is presumed that Congress acted intentionally and purposely. *E. g., Russello* v. *United States*, 464 U. S. 16, 23. Where Congress wanted to provide for successor liability in the Coal Act, it did so explicitly, as demonstrated by §§ 9706(b)(2) and 9711(g)(1). If Congress had meant to make a preenactment successor in interest like Jericol liable, it could have done so clearly and explicitly. Pp. 450–454.

2. The Court rejects the Commissioner's arguments that, in light of the Coal Act's text, structure, and purposes, a direct successor in interest of the entity that was the signatory operator *is* included within the liability scheme and *should* be responsible for that operator's Combined Fund premiums if the operator is defunct and there is no other "related person" still in business. Pp. 454–462.

(a) The Act's text supports neither of two readings proposed by the Commissioner. First, the Commissioner argues that, because § 9701(c)(2)(A)'s last sentence states that "related person" "include[s]" a successor in interest of "any person described in clause (i), (ii), or (iii)," and because these clauses mention the "signatory operator" itself, that operator is "described" in clause (i) by virtue of the express reference. It is unlikely that Congress, which neither created a separate category for signatory operators nor included signatory operators within the categories, intended to attach liability to a group such as successors in interest to signatory operators through a general clause that was meant to reach persons "described" in one of three explicit categories. Second, the Commissioner argues that, because a signatory operator is necessarily a member of a controlled group of corporations that includes itself under § 9701(c)(2)(A)(i), a "successor in interest" of a member of that group includes a successor in interest of the signatory operator. Section 9701(c)(2)(A)(i), however, cannot be divorced from the clause that begins the related persons provision: "A person shall be considered to be *a related person to* a signatory operator if that person is—." § 9701(c)(2)(A) (emphasis added). Because it makes little sense for a signatory operator to be related to itself, the statute necessarily implies that a "related person" is a separate entity from a signatory operator. Moreover, the Commissioner's argument only works where the signatory operator is actually part of a "controlled group of corporations." The argument has no force here, in any event, because the Commissioner does not contend that Shackleford was part of such a group. Pp. 455–456.

(b) The floor statements of two Senators who sponsored the Coal Act, which the Commissioner alleges support her position, cannot amend the unambiguous language of the statute. There is no reason to give greater weight to a Senator's floor statement than to the collective votes

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of both Houses, which are memorialized in the unambiguous statutory text. Pp. 456–457.

(c) Also unavailing is the Commissioner's argument that construing the "related person" provision to exclude a signatory's direct successor in interest would be contrary to Congress' stated purposes of ensuring that each Combined Fund beneficiary's health care costs are borne (if possible) by the person with the most direct responsibility for the beneficiary, not by persons that had no connection with the beneficiary or by the public fisc. The Commissioner appears to request application of some form of an absurd results test. Respondents answer correctly that this Court rarely invokes such a test to override unambiguous legislation, and offer several explanations for why Congress would have purposefully exempted successors in interest of a signatory operator from the "related person" definition. Where the statutory language is clear and unambiguous, this Court need neither accept nor reject a particular "plausible" explanation for why Congress would have written a statute as it did. Negotiations surrounding the bill's enactment tell a typical story of legislative battle among interest groups, Congress, and the President. It is quite possible that a bill that assigned liability to successors of signatory operators would not have survived the legislative process. The deals brokered during a Committee markup, on the floor of the two Houses, during a joint House and Senate Conference, or in negotiations with the President are not to be second-guessed by this Court, whose role is to interpret the language of the statute enacted by Congress. The Court will not alter unambiguous text in order to satisfy the Commissioner's policy preferences. Pp. 458–462.

(d) Finally, the Court rejects the Commissioner's suggestion that, because it was reasonable for her to conclude that direct successors of a signatory operator should be responsible for the operator's employees, her interpretation is entitled to deference. In the context of an unambiguous statute, this Court need not contemplate deferring to an agency's interpretation. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843. P. 462.

226 F. 3d 291, affirmed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion, in which O'CONNOR and BREYER, JJ., joined, *post*, p. 462.

Paul R. Q. Wolfson argued the cause for petitioner. With him on the briefs were *Solicitor General Olson, Acting As-*

sistant Attorney General Schiffer, Deputy Solicitor General Kneedler, Mark B. Stern, and *Jeffrey Clair.*

Peter Buscemi argued the cause for the Trustees of the United Mine Workers of America Combined Benefit Fund as *amici curiae* urging reversal. With him on the brief were *John R. Mooney, Mark J. Murphy,* and *David W. Allen.*

John R. Woodrum argued the cause for respondents. With him on the briefs was *Harold R. Montgomery.**

JUSTICE THOMAS delivered the opinion of the Court.

This case arises out of the Commissioner of Social Security's assignment, pursuant to the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U. S. C. § 9701 *et seq.* (1994 ed. and Supp. V), of 86 retired coal miners to the Jericol Mining, Inc. (Jericol). The question presented is whether the Coal Act permits the Commissioner to assign retired miners to the successors in interest of out-of-business signatory operators.[1] The United States Court of Appeals for the Fourth Circuit held that it does not. *Sigmon Coal Co.* v. *Apfel,* 226 F. 3d 291 (2000). We affirm.

I

The Coal Act reconfigured the system for providing private health care benefits to retirees in the coal industry. In restructuring this system, Congress had to contend with

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**Grant Crandall* filed a brief for the United Mine Workers of America as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Bellaire Corp. by *Donald B. Ayer, Jonathan C. Rose,* and *Thomas A. Smock;* for R. G. Johnson Co., Inc., by *Mary Lou Smith;* and for USX Corp. et al. by *David J. Laurent.*

[1] A signatory operator is a "coal operato[r] that signed any [National Bituminous Coal Wage Agreement] or any other agreement requiring contributions to the 1950 or 1974 Benefit Plans." *Eastern Enterprises* v. *Apfel,* 524 U. S. 498, 514 (1998); see also 26 U. S. C. § 9701(c)(1) (1994 ed.) ("The term 'signatory operator' means a person which is or was a signatory to a coal wage agreement").

over half a century of collective-bargaining agreements between the coal industry and the United Mine Workers of America (UMWA), the coal miners' union. Tensions between coal operators and the UMWA had often led to lengthy strikes with serious economic consequences for both the industry and its employees. Confronted with an industry fraught with contention, Congress was faced with a difficult task.[2]

This was not the first time that the Federal Government had been called on to intervene in negotiations within the industry. Such tensions motivated President Truman, in 1946, to issue an Executive Order directing the Secretary of the Interior to take possession of all bituminous coal mines and to negotiate with the UMWA over changes in the terms and conditions of miners' employment. See *Eastern Enterprises* v. *Apfel*, 524 U. S. 498, 504–505 (1998) (plurality opinion) (quoting 11 Fed. Reg. 5593 (1946)). These negotiations culminated in the first of many agreements that resulted in the creation of benefit funds compensating miners, their dependents, and their survivors. 524 U. S., at 505.

Subsequently, in 1947, the UMWA and several coal operators entered into a collectively bargained agreement, the National Bituminous Coal Wage Agreement (NBCWA), which established a fund under which three trustees "were given authority to determine," among other things, the allocation of benefits to miners and their families. *Id.*, at 505–506. Further disagreement prompted the parties to negotiate another NBCWA in 1950. The following year, the Bituminous Coal Operators' Association (BCOA) was created as a multiemployer bargaining association and primary representative for the coal operators in their negotiations with the UMWA. *Id.*, at 506.

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[2] In *Eastern Enterprises*, 524 U. S., at 504–514, we discussed at great length the history of negotiations between the coal industry and the UMWA over the provision of employee benefits to coal miners. We provide only a brief summary here.

While the NBCWA was amended occasionally and new NBCWAs were adopted in 1968 and 1971, the terms and structure of the 1950 agreement remained largely unchanged between 1950 and 1974. *Ibid.* In 1974, in order to comply with the Employee Retirement Income Security Act of 1974, 29 U. S. C. § 1001 *et seq.* (1994 ed. and Supp. V), the UMWA and the BCOA negotiated a new agreement to finance benefits. 524 U. S., at 509. The 1974 NBCWA created four trusts that replaced the 1950 fund.[3]

These benefit plans quickly developed financial problems. Thus, in 1978 the parties executed another NBCWA. This agreement assigned responsibility for the health care of active and retired employees to the respective coal mine operators who were signatories to the earlier NBCWAs, and left the 1974 Benefit Plan in effect only for those retirees whose former employers were no longer in business. *Id.*, at 510.

Nonetheless, financial problems continued to plague the plans "as costs increased and employers who had signed the 1978 NBCWA withdrew from the agreement, either to continue in business with nonunion employees or to exit the coal business altogether." *Id.*, at 511. "As more and more coal operators abandoned the Benefit Plans, the remaining signatories were forced to absorb the increasing cost of covering retirees left behind by exiting employers." *Ibid.* Pursuant to yet another NBCWA, the UMWA and the BCOA in 1988 attempted to remedy the problem, this time by imposing withdrawal liability on NBCWA signatories that seceded from the benefit plans.

Despite these efforts, the plans remained in serious financial crisis and, by June 1991, the 120,000 individuals who

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[3] These trusts included the UMWA 1950 Benefit Plan and Trust (1950 Benefit Plan), which provided nonpension benefits including medical benefits for miners who retired before January 1, 1976, and the UMWA 1974 Benefit Plan and Trust (1974 Benefit Plan), which provided such benefits for active miners and those who retired after 1975. *Id.*, at 509.

received health benefits from the funds were in danger of losing their benefits. Frieden, Congress Ponders Fate of Coal Miners' Fund, 10 Business & Health 65 (Sept. 1992) (hereinafter Frieden). About 60% of these individuals were retired miners and their dependents whose former employers were no longer contributing to the benefit plans. Another 15% worked for employers that were no longer UMWA-represented or were never unionized.[4] Karr, Union, Nonunion Coal Companies Head for Showdown on Retirement Benefits, Wall Street Journal, Mar. 3, 1992, p. A6 (hereinafter Karr). These troubles were further aggravated by rising health care costs. Frieden 65.

The UMWA threatened to strike if a legislative solution was not reached. Karr A6. And BCOA members, which included those coal firms that were currently signatories to NBCWAs, threatened that they would not renew their commitments to cover retiree costs when their contracts expired. *Ibid.* Following another strike and much unrest, Secretary of Labor Elizabeth Dole created the Advisory Commission on United Mine Workers of America Retiree Health Benefits (Coal Commission), which studied the problem and proposed several solutions. *Eastern Enterprises*, 524 U. S., at 511–512. In particular, the Coal Commission focused on how to finance the health care benefits of orphaned retirees.

Congress considered these and other proposals and eventually reconfigured the allocation of health benefits for coal miner retirees by enacting the Coal Act in 1992. Crafting the legislative solution to the crisis, however, was no easy task. The Coal Act was passed amidst a maelstrom of con-

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[4] The term "orphan retirees" encompassed both "true orphans," whose former employers were no longer in business, and "reachback orphans," whose former employers were still in business but no longer signatories to a coal wage agreement and possibly no longer in the coal business. House Committee on Ways and Means, Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992, 104th Cong., 1st Sess., 1 (Comm. Print 1995) (hereinafter Development).

tract negotiations, litigation,[5] strike threats, a Presidential veto of the first version of the bill[6] and threats of a second veto, and high pressure lobbying,[7] not to mention wide disagreements among Members of Congress.

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[5] See, *e. g.*, *McGlothlin* v. *Connors*, 142 F. R. D. 626 (WD Va. 1992). This lawsuit involved the beneficiaries of the 1950 Benefit Plan and the 1974 Benefit Plan, the trustees, and the BCOA. The District Court Judge encouraged them to "zealously seek passage of a bill in Congress to permit the transfer of other funds now in the possession of the Trustees, which are in excess of any future projected needs, to finance the Benefit Trusts." *Id.*, at 646.

[6] Under the original proposal, introduced by Senator Jay Rockefeller, benefits would have been financed through taxes on the entire coal industry and premiums collected from reachback companies that were considered responsible for specific orphans. Development 12. With support from both the UMWA and the BCOA, but not the Private Benefits Alliance (PBA), a group of nonunion companies, Congress originally passed this bill as part of a comprehensive tax package. See Karr A6. President Bush, however, vetoed the entire package, in part because of the coal tax provisions. Tax Package Veto Kills Bailout Plan; Rockefeller Vows to Find Another Way, Mine Regulation Reporter, Mar. 27, 1992, 1992 WL 2219562. Members of Congress continued to push for legislation, using a comprehensive energy bill as the vehicle. While Senator Rockefeller attempted to add the coal tax provision to the energy bill, his measure was strongly opposed by a number of Senators and by the Bush administration. Cloture Motion on Energy Bill Fails but Dole Says Resolution of Dispute Over Controversial Coal Tax May Be Near; Bush Threatens Veto if it Remains, Foster Natural Gas Report, No. 1886, July 23, 1992, p. 1. After much negotiation, the final version of the bill did not include the tax provision and provided that only companies that were party to the NBCWAs would be required to cover retiree health costs. Senate Adopts Compromise Amendment on Funding of Miner Health Benefits, 147 BNA Daily Labor Report No. 147, p. A–12 (July 30, 1992).

[7] The UMWA and the BCOA, for example, had joined forces to support legislation that would require nonunion companies to share in the cost of providing the health benefits, thereby shifting the burden of paying into the funds to the entire industry. By contrast, the PBA, the alliance of nonunion companies, insisted that because they never employed any of the retirees, they should not be forced to pick up the other companies' obligations. Karr A6.

The Act "merged the 1950 and 1974 Benefit Plans into a new multiemployer plan called the United Mine Workers of America Combined Benefit Fund (Combined Fund)." *Id.*, at 514; see 26 U. S. C. § 9702(a) (1994 ed.). The Combined Fund "is financed by annual premiums assessed against 'signatory coal operators,' *i. e.*, coal operators that signed any NBCWA or any other agreement requiring contributions to the 1950 or 1974 Benefits Plans." *Eastern Enterprises*, 524 U. S., at 514. Where the signatory is no longer in business, the statute assigns liability for beneficiaries[8] to a defined group of "related persons." *Ibid.*; see §§ 9706(a), 9701(c)(2), (7). The Coal Act charged the Commissioner of Social Security with assigning each eligible beneficiary to a signatory operator or its related persons. § 9706(a). The statute identifies specific categories of signatory operators (and their related persons) and requires the Commissioner to assign beneficiaries among these categories in a particular order. *Ibid.* The Coal Act also ensures that if a beneficiary remains unassigned because no existing company falls within the aforementioned categories, then benefits will be financed by the Combined Fund, either with funds transferred from interest earned on the Department of the Interior's Abandoned Mine Reclamation Fund or from an additional premium imposed on all assigned signatory operators on a pro rata basis. See §§ 9704(a), (d), 9705(b).

II

Respondent Jericol was formed in 1973 as Irdell Mining, Inc. (Irdell). Shortly thereafter, Irdell and another company purchased the coal mining operating assets of Shackleford Coal Company, a company that was a signatory to a coal

[8] The term "beneficiary" refers to an individual who "(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or (2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree." § 9703(f).

wage agreement while it was in business. *Sigmon Coal Co.* v. *Apfel*, 33 F. Supp. 2d 505, 507 (WD Va. 1998). They acquired the right to use the Shackleford name and assumed responsibility for Shackleford's outstanding contracts, including its collective-bargaining agreement with the UMWA. App. 23–24, 26. "There was no common ownership between Irdell and Shackleford." 226 F. 3d, at 297. Irdell subsequently changed its name, operating as the Shackleford Coal Company until 1977, when it again changed its name to Jericol. The new company was a signatory only to the 1974 NBCWA.

Acting pursuant to § 9706(a), between 1993 and 1997, the Commissioner assigned premium responsibility for over 100 retired miners and dependents to Jericol. Of these, 86 were assigned under § 9706(a)(3) because they had worked for Shackleford and the Commissioner determined that as a "successor" or "successor in interest" to the original Shackleford, Jericol qualified as a "related person" to Shackleford. The others were assigned because they had actually worked for Jericol. Jericol appealed most of the Commissioner's determinations,[9] arguing that the assignments were erroneous both because Jericol was not a successor in interest to Shackleford and because Jericol was not a related person to Shackleford.[10] See, *e. g.*, Pet. for Cert. 45a–62a.

Dissatisfied with the outcome of administrative proceedings, respondent Sigmon Coal Company, Inc.,[11] and Jericol

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[9] Jericol did not appeal the most recent 1997 assignment to the Commissioner, arguing that it had already filed suit and should not be required to exhaust its administrative remedies before seeking relief given the similarity of the law and facts underlying each assignment of Shackleford's miners to Jericol. The District Court agreed. *Sigmon Coal Co.* v. *Apfel*, 33 F. Supp. 2d 505, 508 (WD Va. 1998).

[10] In this case, we are only reviewing whether Jericol is a related person to Shackleford.

[11] Sigmon Coal joined Jericol as a plaintiff apparently because they are related persons under the Coal Act, 26 U. S. C. § 9701(c)(2) (1994 ed.), and thus jointly and severally responsible for any amounts due from either. § 9704(a). See 33 F. Supp. 2d, at 506, n. 3.

filed suit against the Commissioner, arguing that he wrongfully assigned retirees and dependents to Jericol. 33 F. Supp. 2d, at 506. The District Court concluded that the classification regime of the Coal Act does not provide, directly or indirectly, "for liability to be laid at the door of successors of defunct signatory operators." *Id.*, at 509. The District Court ordered the Commissioner to withdraw the challenged assignments and enjoined the Commissioner from assigning additional retirees to Jericol on the basis that it is a related person to the original Shackleford.

The Commissioner appealed, arguing that a "straight reading" of the statute shows that a successor in interest to a signatory operator qualifies as a related person, thereby permitting the assignment of the retirees and dependents to Jericol. 226 F. 3d, at 303. Alternatively, the Commissioner argued that the District Court's "reading . . . produces inexplicable, anomalous results that are clearly at odds with congressional intent." *Ibid.*

"[D]eclin[ing] the Commissioner's invitation to rewrite the Coal Act," the United States Court of Appeals for the Fourth Circuit affirmed. *Id.*, at 294. The Court of Appeals concluded that the "statute is clear and unambiguous" and that the court was "bound to read it exactly as it is written." *Ibid.* Accordingly, the court held that Jericol was not a "related person" to Shackleford and thus could not be held responsible for Shackleford's miners. The Court of Appeals rejected the Commissioner's arguments that this reading either contravenes congressional intent or begets "some fairly odd results." *Id.*, at 305, 307. Rather, the Court of Appeals found plausible Jericol's explanation that the plain text of the Act was consistent with Congress' desire to promote the sale of coal companies and to respond to complaints by coal operators that they were being required to pay benefits for retired miners who had neither worked for them nor maintained any other relationship with them. *Id.*, at 307. A plausible explanation, the court concluded, "is all we need

to reject the assertion that the Coal Act's definition of 'related person' is, on its face, absurd." *Id.*, at 308. Alternatively, the court reasoned, even if the literal text of the statute produced an arguably anomalous result, "we are not simply free to ignore unambiguous language because we can imagine a preferable version." *Ibid.* This was not one of those rare cases, the court concluded, where Congress had drafted a statute that "produced an absurdity 'so gross as to shock the general moral or common sense.'" *Ibid.* (quoting *Maryland Dept. of Ed.* v. *Department of Veterans Affairs*, 98 F. 3d 165, 169 (CA4 1996)).

We granted certiorari, 532 U. S. 993 (2001), and now affirm.

III

As in all statutory construction cases, we begin with the language of the statute. The first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 340 (1997) (citing *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 240 (1989)). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" 519 U. S., at 340.

With respect to the question presented in this case, this statute is unambiguous. The statutory text instructs that the Coal Act *does not permit* the Commissioner to assign beneficiaries to the successor in interest of a signatory operator. The statute provides:

> "For purposes of this chapter, the Commissioner of Social Security shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:
>
> "(1) First, to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

"(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

"(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement." 26 U. S. C. § 9706(a) (1994 ed.).

In this case, the Commissioner determined that because Shackleford is a pre-1978 signatory and employed the disputed miners for over 24 months, assignment must be made under category 3. It then assigned the miners to Jericol after determining that Jericol was a successor in interest to Shackleford and was therefore a "related person" to Shackleford. 226 F. 3d, at 298.

We disagree with the Commissioner's reasoning. Because the disputed retirees were employees of Shackleford, the "signatory operator" that sold its assets to Jericol (then-Irdell) in 1973, the Commissioner can only assign them to Jericol if it is a "related person" to Shackleford. The statute provides that "a person shall be considered to be a related person to a signatory operator if that person" falls within one of three categories:

"(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

> "(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or
>
> "(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner." § 9701(c)(2).

In addition, the last sentence of § 9701(c)(2)(A) states that "[a] related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)."

Although the Commissioner maintains that Jericol is a "related person" to Shackleford, Jericol does not fall within any of the three specified categories defining a "related person." There is no contention that it was ever a member of a controlled group of corporations including Shackleford, that it was ever a business under common control with Shackleford, or that it ever had a partnership interest or engaged in a joint venture with Shackleford. Therefore, liability for these beneficiaries may attach to Jericol only if it is a successor in interest to an entity described in §§ 9701(c)(2)(A)(i)–(iii). Because Jericol is a successor in interest only to Shackleford, Jericol will be liable only if a signatory operator itself, here Shackleford, falls within one of these categories. None of the three categories, however, includes the signatory operator itself.

Nor should we infer as much, as it is a general principle of statutory construction that when "'Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Russello* v. *United States*, 464 U. S. 16, 23 (1983) (quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (CA5 1972)). Where Congress wanted to provide for successor liability in the Coal Act, it did so explic-

itly, as demonstrated by other sections in the Act that give the option of attaching liability to "successors" and "successors in interest."

For example, § 9706(b)(2) provides that with respect to beneficiaries of the Combined Fund, "[i]f a person becomes a successor of an assigned operator after the enactment date [of the Coal Act], the assigned operator *may* transfer the assignment of an eligible beneficiary . . . to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter." (Emphasis added.) The subsection also provides, however, that "the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter." *Ibid.* While this provision gives a *postenactment* successor the *option* of transferring the assignment and assuming the signatory operator's liability, it does not address the liability of *preenactment* successors.

Further, § 9711 enumerates the continuing obligations of Individual Employer Plans (IEPs) maintained pursuant to a 1978 or subsequent coal wage agreement.[12] Section 9711(g)(1) provides that "[f]or [the] purposes of" IEPs and the 1992 UMWA Benefit Plan, "[t]he term 'last signatory operator' shall include a successor in interest of such operator." Thus, in § 9711, Congress gave "last signatory operator" a subsection-specific definition that extends the IEP obligations of a preenactment signatory operator to include its "successors in interest."

Those subsections stand in direct contrast to the provisions implicated here: §§ 9701(c)(1), (2), and (4), which define "signatory operator," "related persons," and "last signatory operator," respectively, "[f]or [the] purposes of this section,"

[12] The rules applicable to successors of signatory operators who maintain such plans are provided in §§ 9711(g)(1) and (2); § 9711(g)(2) discusses the obligations of a person who becomes a successor of a last signatory operator postenactment, and is nearly identical to § 9706(b)(2).

and *do not* specify that they include or impose liability on the signatory operator's successor in interest.

Despite the unambiguous language of the statute with respect to those entities to whom successor liability attaches, the Commissioner essentially asks that we read into the statute mandatory liability for preenactment successors in interest to signatory operators. This we will not do. "We refrain from concluding here that the differing language in the two subsections has the same meaning in each. We would not presume to ascribe this difference to a simple mistake in draftsmanship." *Russello, supra,* at 23. Congress wrote the statute in a manner that provides for liability only for successors in interest to *certain* signatory operators. If Congress meant to make a preenactment successor in interest like Jericol liable, it could have done so clearly and explicitly.

Therefore, because the statute is explicit as to who may be assigned liability for beneficiaries and neither the "related persons" provision nor any other provision states that successors in interest to signatory operators may be assigned liability, the plain language of the statute necessarily precludes the Commissioner from assigning the disputed miners to Jericol.

IV

The Commissioner admits that the "statute does not state *in haec verba* that an assignment may be made to a direct successor in interest of the entity that was the signatory operator itself." Brief for Petitioner 10. Nonetheless, the Commissioner concludes that, in light of the text, structure, and purposes of the Coal Act, such direct successors in interest *are* included within the liability scheme and *should* be responsible for a signatory operator's Combined Fund premiums if the signatory operator itself is defunct and there is no other "related person" still in business. *Ibid.* We address the Commissioner's arguments below.

A

The Commissioner proposes several readings of the statute. First, the Commissioner argues that, because the last sentence of § 9701(c)(2)(A) states that the term "related person" "include[s]" a successor in interest of "any person described in clause (i), (ii), or (iii)," and because these clauses mention the "signatory operator" itself, the signatory operator is "described" in clause (i) by virtue of the express reference. Brief for Petitioner 24.

The text of the statute does not support this reading. Where Congress wanted to include successors in interest, it did so clearly and explicitly. See *supra*, at 452–453. Each category of "related persons" describes a definitive group of persons. § 9701(c)(2). Congress neither created a separate category for signatory operators nor included signatory operators within these categories. It is unlikely that Congress intended to attach liability to a group such as successors in interest to signatory operators through a general clause that was meant to reach persons "described" in one of three explicit categories.

Second, the Commissioner argues that, under § 9701(c)(2)(A)(i), a signatory operator is necessarily a member of a controlled group of corporations that includes itself. Brief for Petitioner 24. This subsection provides that "related persons" include "a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator." § 9701(c)(2)(A)(i). Thus, according to the Commissioner's logic, if corporation A is a member of a controlled group that includes corporations A, B, and C, then a "successor in interest" of a member of the group of corporations A, B, and C includes a successor in interest of corporation A. *Ibid.*

Standing alone, the subsection supports the Commissioner's argument that a signatory operator is necessarily a member of a group of corporations that includes itself. But this provision cannot be divorced from the clause that begins

the related persons provision: "A person shall be considered to be *a related person to* a signatory operator if that person is—." § 9701(c)(2)(A) (emphasis added). Under the Commissioner's reading, the signatory operator would be related to itself. But just as it makes little sense to say that I am a related person to myself, it makes little sense to say that a signatory operator is a related person to itself. The statute therefore necessarily implies that a "related person" is a separate entity from a signatory operator. Moreover, the Commissioner's argument only works where the signatory operator is actually part of a "controlled group of corporations." The Commissioner does not account for the situation where a signatory operator is *not* part of a controlled group. And because the Commissioner does not contend that Shackleford was part of such a controlled group of corporations, this argument, in any event, has no force here.

B

The Commissioner also contends that the background, legislative history, and purposes of the Coal Act confirm that Congress intended that liability for a signatory operator's employees could be placed on the signatory's direct successor in interest.

1

As support, the Commissioner turns to the floor statements of Senators Malcolm Wallop and Jay Rockefeller, arguing that, because these Senators sponsored the Coal Act, their views are entitled to special weight. In particular, the Commissioner relies on an explanation of the legislation placed into the record by Senator Wallop, making the point that, in addition to the three categories of related persons, "the statute provides that related persons" includes "(iv) in specific instances successors to the collective bargaining agreement obligations of a signatory operator." 138 Cong.

Rec. 34002 (1992).[13] The Commissioner also points to Senator Rockefeller's statement that "[t]he term 'signatory operator,' as defined in new section 9701(c)(1), includes a successor in interest of such operator." *Id.*, at 34033.[14]

Floor statements from two Senators cannot amend the clear and unambiguous language of a statute. We see no reason to give greater weight to the views of two Senators than to the collective votes of both Houses, which are memorialized in the unambiguous statutory text.[15]

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[13] Placed in its proper context, this statement is entirely consistent with the statutory text. Senator Wallop noted first that the bill makes "each such related person *fully responsible for the signatory operator's obligation* to provide benefits under the Act should the signatory no longer be in business, or otherwise fail to fulfill its obligations under the Act." 138 Cong. Rec., at 34002 (emphasis added). After listing the three categories of related persons, Senator Wallop then added category (iv): "*in specific instances* successors to the collective bargaining agreement *obligations* of a signatory operator—are equally obligated with the signatory operator to pay for continuing health care coverage." *Ibid.* (emphasis added). To begin with, it must be noted that Senator Wallop did not state that all successors are responsible for the beneficiaries. Rather, he narrowed the group with the qualifying phrase "in specific instances." And Senator Wallop did not suggest that responsibility attaches to successors in interest *to signatory operators*. Instead, the "successors to the collective bargaining agreement obligations" are nothing more than those entities that he previously identifies as "fully responsible for the signatory operator's obligation": the related persons categorized in clauses (i)–(iii). Consequently, the statement is consistent with the final sentence of the related persons definition which provides that "[a] related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)." § 9701(c)(2)(A).

[14] We need look to only the statutory text to know that the definition in fact does not include the successor in interest. See § 9701(c)(1) ("The term 'signatory operator' means a person which is or was a signatory to a coal wage agreement"). See *supra*, at 455.

[15] Despite the dissent's assertion that we should defer to what it characterizes as "clear evidence of coherent congressional intent," *post*, at 462 (opinion of STEVENS, J.), the dissent points to only two sentences in the Congressional Record. Even if we were to believe that floor statements

The Commissioner also argues that construing the related person provision to exclude a signatory's direct successor in interest would be contrary to Congress' stated purpose of ensuring that each Combined Fund beneficiary's health care costs is borne (if possible) by the person with the most direct responsibility for the beneficiary, not by persons that had no connection with the beneficiary or by the public fisc. The Commissioner contends that the Court should choose a construction of the statute that effectuates Congress' "overriding purpose" of avoiding a recurrence of the orphan retiree catastrophe, which was caused in large part by operators avoiding responsibility for their beneficiaries by changing their corporate structures, selling assets, or ceasing operations. See Brief for Petitioner 30.

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can amend clear statutory language, these statements can hardly be characterized as "clear evidence." To begin with, the dissent mischaracterizes Senator Wallop's statement, neglecting to explain its context and to include the qualifying phrase "in specific instances." See *supra*, at 457, n. 13. Absent support from Senator Wallop's statement, the dissent is left only with Senator Rockefeller's explanation. The dissent essentially contends that we should use a single sentence in a long colloquy to effect a major change in the statute. However, the dissent fails to note that the House passed the bill on October 5, 1992, *three days before* Senator Rockefeller made his statement. See 6 Legislative History of the Energy Policy Act of 1992 (Committee Print compiled for the Senate Committee on Energy and Natural Resources by the Library of Congress), p. 4678 (1994) (hereinafter Legislative History). There is no indication that Senator Rockefeller's version of the provision garnered the support of the House, the Senate, and the President. And, given that the House had already passed the bill, the dissent's additional reliance on the *absence* of a response to the Senators' explanation simply makes no sense. See *post*, at 468–469. Moreover, were we to adopt this form of statutory interpretation, we would be placing an obligation on Members of Congress not only to monitor their colleague's floor statements but to read every word of the Congressional Record including written explanations inserted into the record. This we will not do. The only "evidence" that we need rely on is the clear statutory text.

The Commissioner further suggests that the Court of Appeals' construction of the statute leads to the counter-intuitive result that a direct successor in interest of a signatory may not be made responsible for a signatory's beneficiaries—even though such successor liability would be supported by the background principles of successorship[16]—while a more distantly related successor in interest of a corporate affiliate of a signatory operator may be made responsible for the signatory's beneficiaries. Thus, the Commissioner appears to request that the Court invoke some form of an absurd results test. *Id.*, at 32 (citing *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64, 70–71 (1994); *United States* v. *Brown*, 333 U. S. 18, 27 (1948)).[17]

Respondents correctly note that the Court rarely invokes such a test to override unambiguous legislation. Moreover, respondents offer several explanations for why Congress would have purposefully exempted successors in interest of a signatory operator from the "related person" definition.

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[16] The Commissioner asks that the Court apply the background principles of successorship, as articulated in the Court's treatment of labor, employment, and benefit statutes, that a corporate entity's liability under a statutory scheme should be attributed to the entity's direct successor in interest. Brief for Petitioner 36–40. But in the Coal Act, Congress expressly delineated those parties to which it sought to attach responsibility. Where a statute provides an explicit and all-inclusive scheme that does not include successors in interest to signatory operators, and where there is no indication that Congress intended that the statute be supplemented by reference to background principles, we will not import these principles into our analysis.

[17] The dissent makes the conclusory assertion that our "interpretation of the statute . . . recreates the same difficulties that beset the NBCWAs and that Congress explicitly sought to avoid." See *post*, at 471. The dissent, however, provides no data for its conclusory assertion. Nor does it explain how our interpretation "recreates the same difficulties that beset the NBCWAs." *Ibid.* And the dissent ignores the fact that the new scheme broadly expanded the group of persons responsible for beneficiaries. Thus, the fact that Congress declined to attach liability to one group of persons tells us nothing about the new system's viability.

First, respondents argue that coal operators undoubtedly would have opposed legislation that seriously expanded their liability with respect to miners that they had never employed,[18] and that it is hard to imagine that the 1988 signatory companies would have agreed to a compromise that exposed them to open-ended statutory liability linked to decades of buying, selling, and trading property. Brief for Respondents 39–43.

Second, respondents speculate that Congress may have concluded that injecting coal industry successor issues into the Commissioner's task of allocating liability for more than 100,000 UMWA retirees and dependents would consume a disproportionate share of the agency's resources, create gridlock in the assignment process, precipitate endless operator challenges under the Coal Act's administrative review process, and thwart implementation of the program. *Id.*, at 43–45. Finally, respondents suggest that Congress could have been concerned about the adverse impact that successor liability might have had on the valuation and sale of union companies and properties.[19] *Id.*, at 45–46.

Where the statutory language is clear and unambiguous, we need neither accept nor reject a particular "plausible" explanation for why Congress would have written a statute

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[18] Respondents argue that successor liability covering 40 years of pre-Act transactions could have exploded the number of Combined Fund beneficiaries potentially assignable to the 1988 signatory operators. See Brief for Respondents 41. It would have been difficult for the 1988 signatories to estimate their potential liability under a legislative fix that included successor liability. Thousands of pre-1976 UMWA retirees were potential candidates for assignment to a 1988 NBCWA signatory under such broad based successor liability.

[19] If Congress had retroactively burdened coal asset purchasers for financial shortfalls arising from failures under a private party contract, respondents argue, future purchasers would be wary about paying fair market value for coal property. Such concerns might destabilize the unionized industry's economic underpinning, at a time when many assigned operators might need to raise money to help defray costs imposed by the Act.

that imposes liability on the successors of the companies that fall within the categories of §§ 9701(c)(2)(A)(i)–(iii) but not on successors to the signatory operators themselves. Dissatisfied with the text of the statute, the Commissioner attempts to search for and apply an overarching legislative purpose to each section of the statute. Dissatisfaction, however, is often the cost of legislative compromise. And negotiations surrounding enactment of this bill tell a typical story of legislative battle among interest groups, Congress, and the President. See *supra*, at 445–446, and nn. 6–7. Indeed, this legislation failed to ease tensions among many of the interested parties.[20] Its delicate crafting reflected a compromise amidst highly interested parties attempting to pull the provisions in different directions. See, *e. g.*, 6 Legislative History 4569–4571. As such, a change in any individual provision could have unraveled the whole. It is quite possible that a bill that assigned liability to successors of signatory operators would not have survived the legislative process. The deals brokered during a Committee markup, on the floor of the two Houses, during a joint House and Senate Conference, or in negotiations with the President, however, are not for us to judge or second-guess.

Our role is to interpret the language of the statute enacted by Congress. This statute does not contain conflicting provisions or ambiguous language. Nor does it require a narrowing construction or application of any other canon or interpretative tool. "We have stated time and again that courts must presume that a legislature says in a statute what

[20] The UMWA's lobbying efforts precipitated a lawsuit by the Pittston Coal Company, which sued the UMWA for $250 million, alleging "that at the conclusion of the 1989–1990 strike, the union promised not to lobby on behalf of legislation making 'reachback' companies resume payments to the" retiree health system. UMW Denies Breaching Pittston Pact, 17 Coal Outlook, Dec. 6, 1993, 1993 WL 2678868. "Pittston accused the union of violating a promise not to lobby for industry wide taxation to bail out two retiree health funds." UMW, Pittston Reach Tentative Deal, 18 Coal Outlook, June 20, 1994, 1994 WL 2480375.

it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254 (1992) (quoting *Rubin* v. *United States*, 449 U. S. 424, 430 (1981)) (citations omitted). We will not alter the text in order to satisfy the policy preferences of the Commissioner. These are battles that should be fought among the political branches and the industry. Those parties should not seek to amend the statute by appeal to the Judicial Branch.

C

The Commissioner's final argument is that, even if the Coal Act did not affirmatively provide that responsibility for combined fund premiums may be imposed on a signatory's direct successor, it was reasonable for the Commissioner to conclude that direct successors of a signatory operator should be responsible for the operator's employees. Congress, however, did not delegate authority to the Commissioner to develop new guidelines or to assign liability in a manner inconsistent with the statute. In the context of an unambiguous statute, we need not contemplate deferring to the agency's interpretation. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984).

Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE O'CONNOR and JUSTICE BREYER join, dissenting.

This case raises the question whether clear evidence of coherent congressional intent should inform the Court's construction of a statutory provision that seems, at first blush, to convey an incoherent message. Today, a majority of the Court chooses to disregard that evidence and, instead, ad-

heres to an interpretation of the statute that produces absurd results. Two Members of Congress—both sponsors of the legislation at issue—have explained that the statute does not mandate such results, and the agency charged with administering the statute agrees. As a partner of the other two branches of Government, we should heed their more reasonable interpretation of Congress' objectives.

The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U. S. C. § 9701 *et seq.* (1994 ed. and Supp. V), authorizes the Commissioner of Social Security (Commissioner) to assign responsibility for providing health care benefits for certain retired coal miners and their beneficiaries. It was enacted in response to the financial difficulties that had plagued the National Bituminous Coal Wage Agreements (NBCWAs), a multiemployer, private health care system, established by representatives of the coal industry and the United Mine Workers Association (UMWA). See *Eastern Enterprises* v. *Apfel*, 524 U. S. 498, 511 (1998). The NBCWAs were part of an arrangement in which the UMWA accepted collective-bargaining agreements dictating wages, benefits, and other terms of employment in exchange for, *inter alia*, promises regarding the provision of lifetime health benefits for retired miners. After many of the coal operators who were signatories to the NBCWAs went out of business or withdrew from their coverage, the remaining signatories were forced to assume a share of the health care costs for those operators' employees.

Consequently, the remaining members had an even greater incentive to avoid their obligations under the agreements. *Ibid.* The ensuing downward spiral threatened the NBCWAs' ability to provide health benefits. In evaluating legislative solutions, Congress "was advised that more than 120,000 retirees might not receive 'the benefits they were promised'" during the collective-bargaining process. *Id.*, at 513 (quoting Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing before the Subcommittee on

Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong., 1st Sess., 45 (1991) (statement of Bituminous Coal Operator's Association Chairman Michael K. Reilly)). Congress' objective in passing the Coal Act was to "identify persons most responsible for plan liabilities" and to establish an order of priority to ensure the long-term viability of the fund. Energy Policy Act of 1992, Pub. L. 102–486, § 19142, 106 Stat. 3037.

To accomplish that goal, the Act directs the Commissioner to assign primary responsibility to a "signatory operator" that formerly employed the particular miners and to persons "related" to that operator. The broad definition of the term "related person" includes three classes of entities associated with the signatory and a catchall sentence stating that a "related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)."[1] The question in this case is whether the Act permits the Commissioner to assign retirees to a successor of the signatory itself, or just successors of related persons of the signatory.

The Commissioner reads the statute broadly to include direct successors, whereas the Court has adopted a narrower reading that excludes them from responsibility. Because a signatory operator is not "described in" clause (i), (ii), or (iii),

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[1] Title 26 U. S. C. § 9701(c)(2)(A) (1994 ed.) provides: "A person shall be considered to be a related person to a signatory operator if that person is—

"(i) a member of the controlled group of corporations (within the meaning of [26 U. S. C. §]52(a)) which includes such signatory operator;

"(ii) a trade or business which is under common control (as determined under [26 U. S. C. §]52(b)) with such signatory operator; or

"(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

"A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii)."

the Court concludes that a successor in interest to a signatory cannot be liable for the retirees of its predecessor under the catchall provision. Thus, the Court reads the Act to assign liability first to the signatory operator, assuming it is still in business, then to any related persons of that signatory, and if none exists or is still in business, to the successor in interest of a related person. Liability can never be assigned to a direct successor—the most logical recipient of liability, after the signatory itself.

Two examples illustrate the absurdity of the Court's reading. First, imagine that corporations "A" and "B" operate coal mines in Kentucky and Illinois, respectively. A and B are affiliated corporations; let us say they are members of the same controlled group of corporations. In 1974, each company became a signatory to one of the coal agreements. Subsequently, they both sell their assets to separate purchasers. Under the Court's reading of the Act, the purchaser of the Kentucky mines would be responsible for the health care costs of the Illinois miners and the purchaser of the Illinois mines would be assigned the retirees of the Kentucky company, but neither purchaser would be liable for its predecessor's retired employees.

Now, consider a slightly different scenario in which A still operates a coal mine, but B runs a dairy farm. They are still members of the same controlled group of corporations, however, only A is a signatory of the 1974 agreement. In this hypothetical, when A and B sell their assets, under the Court's reading of the statute, the purchaser of the dairy farm will be liable for the retired miners' benefits while the purchaser of the coal mine has no liability. If that result is not absurd, it is surely incoherent. Why would Congress order such an odd result?

The answer is simple—Congress did not intend this result. Commenting on the final text of the bill that was ultimately enacted, two of the Senators sponsoring the measure explained their understanding of the statutory text to their col-

leagues. Senator Rockefeller of West Virginia, who spoke "as the original author of this legislation," 138 Cong. Rec. 34034 (1992), unambiguously stated that the term "signatory operator" includes "a successor in interest of such operator." *Id.*, at 34033. And in a written explanation of the measure that he placed in the Congressional Record, Senator Wallop stated that the definition of the term "related person" was "intentionally very broad" and encompassed "successors to the collective bargaining agreement obligations of a signatory operator."[2]

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[2] It is of particular interest that he did not limit the scope of potential assignees to those in the three subparagraphs of § 9701(c)(2)(A). He stated:

"[B]ecause of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related persons is intentionally very broad.

"In this regard, the term 'related person' is defined broadly to include companies related to the signatory operator. The Conference Agreement makes each such related person fully responsible for the signatory operator's obligation to provide benefits under the Act should the signatory no longer be in business, or otherwise fail to fulfill its obligations under the Act. Thus, the statute provides that related persons—meaning (i) those within the controlled group of corporations including the signatory operator, using a 50% common ownership test, (ii) a trade or business under common control with a signatory operator, (iii) one with a partnership interest or joint venture with the signatory operator, or (iv) *in specific instances successors to the collective bargaining agreement obligations of a signatory operator—are equally obligated with the signatory operator to pay for continuing health care coverage.*" 138 Cong. Rec. 34002 (1992) (emphasis added).

The meaning of Senator Wallop's reference to "specific instances" is not evident, but he surely did not mean "no instances" as the Court seems to assume. See *ante*, at 457, n. 13. Nor could the phrase "successors to the collective bargaining agreement obligations of a signatory operator" refer to the successors of persons described in clauses (i)–(iii), because members of the same controlled group of corporations, for example, do not assume each other's collective-bargaining agreement obligations. In specific instances, however, direct successors of signatory operators may assume those obligations. See *infra*, at 467–468.

If we assume that Senators Rockefeller and Wallop correctly understood their work product, the provision is coherent. For it is obviously sensible to impose the cost of health care benefits on successors to signatory operators, and equally obvious that there is far less justification for imposing such liability on successors to related companies that are not engaged in coal mining. Moreover, assigning liability to direct successors is consistent with Congress' explicit objective to "identify persons most responsible for plan liabilities." § 19142(a)(2), 106 Stat. 3037.[3] As between the two, the successor to a signatory has more notice that it may be held responsible for its predecessor's liabilities than the successor of a related person of the signatory. In fact, successors to signatories of the 1974 NBCWA are specifically on notice because of a provision in that agreement which states: "[The] Employer promise[s] that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement." Article I, National Bituminous Coal Wage Agreement of 1974.

Not only is the direct successor put on notice; presumably it received a lower sale price in exchange for assuming the collective-bargaining agreement obligations of its predecessor. Consider the facts of this case. Respondent, Jericol Mining, Inc., purchased the coal mining assets of Shackleford Coal Co., a signatory to the 1971 NBCWA. The sales con-

[3] Senator Wallop emphasized this point in clarifying why liability under § 9701(c) is "intentionally very broad." 138 Cong. Rec., at 34002. As he explained: "The purpose of this provision is to insure that every reasonable effort is made to locate a responsible party to provide the benefits before the cost is passed to other signatory companies which have never had any connection to the individual . . . . Allocation of beneficiaries to an entity or business which continues in business is the basic statutory intent. Thus, the Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible." *Ibid.*

tract provided that Jericol would assume responsibility for Shackleford's outstanding contracts, including its collective-bargaining agreement. App. 23, 26. The price Jericol paid for Shackleford's assets, therefore, must have reflected the fact that Jericol was taking on Shackleford's commitments to its retirees. By allowing Jericol to escape responsibility for its end of the bargain at this stage, the Court effectively grants it a windfall.

While the Court trumpets the clear language of the statute, the language here is not clear enough to require disregard of "clearly expressed legislative intention to the contrary," *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 108 (1980), or to require us to accept "absurd results," *United States* v. *Turkette*, 452 U. S. 576, 580 (1981) (citing *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631, 643 (1978)). See *infra*, at 469–470. Nevertheless, the Court accepts respondents' claim that, even if the statute produces odd results, this scheme is the product of a legislative compromise that we cannot override. The drafters, according to this theory, may have confronted significant opposition from successors of signatories who would have faced liability under alternative language. Or Congress may have been concerned that imposing liability on successors would create a disincentive for potential purchasers of coal companies' assets.

If the negotiations were as contentious as respondents imagine and if the Act excluded direct successors as the product of horsetrading, then one would expect a response to the statements of two Senators directly contradicting the terms of that legislative bargain. Surely those Senators who disagreed with Senators Rockefeller and Wallop would have said something to set the record straight. To the contrary, there is no evidence in the legislative history of such a compromise. Respondents and *amici* do not cite any evidence supporting this version of events, nor could respond-

ents' counsel when asked specifically during oral argument. Tr. of Oral Arg. 33–35.

The total absence of any suggestion in the legislative history that the Senators had misdescribed the coverage of the Act is itself significant. See *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 602 (1980) (REHNQUIST, J., dissenting) ("In a case where the construction of legislative language . . . makes so sweeping and so relatively unorthodox a change . . . , I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night"); *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504, 527 (1989) (SCALIA, J., concurring in judgment) (when confronted with statutory language that produces an absurd result, it is appropriate "to observe that counsel have not provided, nor have we discovered, a shred of evidence that anyone has ever proposed or assumed such a bizarre disposition"). Absent some response indicating that the Senators mischaracterized the Act, we ought to construe the statute in light of its clear purpose and thereby avoid the absurd results that the majority countenances.

Indeed, the Court's cavalier treatment of the explanations of the statute provided to their colleagues by Senators Rockefeller and Wallop is disrespectful, not only to those Senators, but to the entire Senate as well. For, although the Court does not say so explicitly, it apparently assumes that the Senators were either dissembling or unable to understand the meaning of the bill that they were sponsoring. Neither assumption is tenable. Much more likely is the simple explanation that the Senators quite reasonably thought the term "signatory operator" included successors. This account is certainly consistent with Congress' instructions in the Dictionary Act, 1 U. S. C. § 1, that a reference to a corporation may embrace its successors and assigns even if not expressly mentioned.

The Coal Act defines a "signatory operator" as "a person which is or was a signatory to a coal wage agreement." 26

U. S. C. § 9701(c)(1) (1994 ed.). The term "person" is not defined, but according to the Dictionary Act it includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." 1 U. S. C. § 1. And, we know from 1 U. S. C. § 5 that "[t]he word 'company' or 'association', when used in reference to a corporation, shall be deemed to embrace the words 'successors and assigns of such company or association', in like manner as if these last-named words, or words of similar import, were expressed." Therefore, reading the term "signatory operator" to encompass direct successors is compatible with the default rules that Congress provided for interpreting its statutes. Nor does the context indicate otherwise, because Congress clearly authorized the Commissioner to assign retirees to other successors, and extending liability to this category of successors is consistent with the purpose of the Act. Cf. *Rowland* v. *California Men's Colony, Unit II Men's Advisory Council*, 506 U. S. 194, 209–211 (1993) (recognizing that even when "contextual features" contradict the Dictionary Act reading, that interpretation may be appropriate if it would make little sense to adopt a more literal reading); *Wilson* v. *Omaha Tribe*, 442 U. S. 653, 666 (1979); *United States* v. *A & P Trucking Co.*, 358 U. S. 121, 123–124 (1958).

Three additional considerations support reading the Act to cover direct successors. First, this reading was consistently endorsed by the several Commissioners responsible for the administration of the Act, notwithstanding a change in control of the Executive Branch.[4] We have previously attached

[4] Although the Social Security Administration has interpreted the meaning of "successor" differently over time (*i. e.*, taking different positions as to whether an asset purchaser qualifies as a successor), it has consistently taken the position that a direct successor can be assigned responsibility for a signatory's employees. See Provisions Relating to the Health Benefits of Retired Coal Miners: Hearing before the House Committee on Ways and Means, 103d Cong., 1st Sess., 24–25 (1993) (statement of then-Acting Commissioner Lawrence H. Thompson) (explaining that miners can be

significance to the fact that after "a new administration took office" an agency concluded that a statutory "term should be given the same definition" as before. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 857–858 (1984).

Second, it is consistent with the Court's treatment of successorship issues in other labor cases, in which we have required successors to bargain with a union certified under a predecessor, see *Fall River Dyeing & Finishing Corp.* v. *NLRB*, 482 U. S. 27, 41 (1987), to assume liability for reinstatement and backpay as a result of a predecessor's unfair labor practice, see *Golden State Bottling Co.* v. *NLRB*, 414 U. S. 168, 181–185 (1973), and to arbitrate disputes as provided in a predecessor's collective-bargaining agreement, see *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543, 548 (1964).

Finally, we should avoid adopting an interpretation of the statute that recreates the same difficulties that beset the NBCWAs and that Congress explicitly sought to avoid. The immediate consequence of the Court's reading is that 86 retired miners will now be unassigned; therefore, their health care expenses will be borne by the remaining signatory operators and their related persons. Assuming there are other retired miners in the same category, today's decision will result in more "orphaned" miners who will draw from the combined fund. To the extent that the cost for their health benefits will be passed along to the other signatory operators, the Court's holding creates an added incentive for the re-

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assigned to "the last active signatory operator (or its successor, if the operator is out of business) for whom the miner worked"); Letter to SSA Southeastern Program Service Center (Aug. 8, 1994), App. 110–111 ("[S]uccessors or successors in interest are treated for assignment purposes as if there had been no change of ownership"); Supplemental Coal Act Review Instructions No. 4 (July 1995), App. to Pet. for Cert. 86a ("[T]he Coal Act does permit assignments to 'successors' and 'successors-in-interest' to *defunct* (inactive) signatory operators").

maining signatories to avoid their obligations under the agreements. The result is effectively the same downward spiral that doomed the NBCWAs.[5] *Eastern*, 524 U. S., at 511.

In my judgment the holding in this case is the product of a misguided approach to issues of statutory construction. The text of the statute provides us with evidence that is usually sufficient to disclose the intent of the enacting Congress, but that is not always the case. There are occasions when an exclusive focus on text seems to convey an incoherent message, but other reliable evidence clarifies the statute and avoids the apparent incoherence. In such a case—and this is one—we should never permit a narrow focus on text to obscure a commonsense appraisal of that additional evidence.

I respectfully dissent.

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[5] For the first three years of the Act, the health care costs for orphaned miners are shared among the signatories. Starting in the fourth year, payment is deducted first from interest earned on the Department of Interior's Abandoned Mine Reclamation Fund (AML), 26 U. S. C. § 9705(b) (1994 ed.). If those funds are exhausted or unavailable, then the costs are shared by the remaining signatories. While the availability of the interest transfers may delay another financial crisis, it should be noted that the AML funds are earmarked for other purposes. See 30 U. S. C. § 1232(g) (1994 ed.); CRS Report, Coal Industry: Use of Abandoned Mine Reclamation Fund Monies for UMWA "Orphan Retiree" Health Benefits, 138 Cong. Rec. 34004, 34006 (1992) ("First priority goes to mining abandonments that could present imminent danger to public health and safety. . . . Any remaining AML funds are designated to eliminate environmental hazards"). Moreover, given the high cost of health care for retired miners, and the likely diminution of the fund's interest earning capacity, see *id.*, at 34006–34007, the interest may not last for long.

Syllabus

WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES *v.* BLUMER

CERTIORARI TO THE COURT OF APPEALS OF WISCONSIN

No. 00–952. Argued December 3, 2001—Decided February 20, 2002

In developing standards for determining Medicaid eligibility, participating States must "tak[e] into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary [of Health and Human Services (Secretary)], *available* to the applicant." 42 U. S. C. § 1396a(a)(17)(B) (emphasis added). Because spouses typically possess assets and income jointly and bear financial responsibility for each other, Medicaid eligibility determinations for married applicants have resisted simple solutions. Until the Medicare Catastrophic Coverage Act of 1988 (MCCA or Act), state standards often left a spouse living at home (called the "community spouse") destitute, the couple's assets drained to qualify his or her mate (the "institutionalized spouse") for Medicaid, and the couple's posteligibility income diminished to reduce the amount payable by Medicaid for institutional care. The MCCA's "spousal impoverishment" provisions responded to this problem by including in the Medicaid statute requirements with which States must comply in allocating a couple's income and resources. The Act's income allocation rules direct that, in any month in which one spouse is institutionalized, "no income of the community spouse shall be deemed available to the institutionalized spouse," § 1396r–5(b)(1); require States to set for the community spouse a "minimum monthly maintenance needs allowance" (MMMNA), § 1396r–5(d)(3); and prescribe that, if the community spouse's posteligibility income is insufficient to yield income equal to or above the MMMNA, the shortfall—called the "community spouse monthly income allowance" (CSMIA)—may be deducted from the institutionalized spouse's income and paid to the community spouse, § 1396r–5(d)(1)(B). The MCCA's resource allocation rules provide, *inter alia*, that, in determining the institutionalized spouse's Medicaid eligibility, a portion of the couple's resources—called the "community spouse resource allowance" (CSRA)—shall be reserved for the benefit of the community spouse, § 1396r–5(c)(2). To calculate the CSRA, the couple's jointly and separately owned resources are added together as of the time the institutionalized spouse's institutionalization commenced; half of that total, subject to certain limits, is then allocated to the community spouse, §§ 1396r–5(c)(1)(A), (2)(B), (f)(2)(A), (g). The CSRA is deemed unavailable to the institutionalized

spouse in the eligibility determination, but all resources above the CSRA (excluding a $2,000 personal allowance reserved for the institutionalized spouse under federal regulations) must be spent before eligibility can be achieved, § 1396r–5(c)(2). Section 1396r–5(e)(2)(C) provides a "fair hearing" mechanism through which a couple may obtain a higher CSRA by establishing that the standard CSRA (in relation to the amount of income it generates) is inadequate to raise "the community spouse's income" to the MMMNA. The States have employed two methods for making this determination; the two methods differ in their construction of the subsection (e)(2)(C) term "community spouse's income." Under the "income-first" method used by most States, "community spouse's income" includes not only the community spouse's actual income at the time of the eligibility hearing, but also an anticipated posteligibility CSMIA authorized by § 1396r–5(d)(1)(B). The income-first method, because it takes account of the potential CSMIA, makes it less likely that the CSRA will be increased; it therefore tends to require couples to expend additional resources before the institutionalized spouse becomes Medicaid eligible. In contrast, the "resources-first" method employed in the remaining States excludes the CSMIA from consideration. The Secretary has circulated for comment a proposed rule allowing States the threshold choice of using either the income-first or resources-first method.

After entering a Wisconsin nursing home, respondent Irene Blumer applied for Medicaid through her husband Burnett. The Green County Department of Human Services (County) determined that the Blumers could retain $74,822 in assets—$72,822 as Burnett's standard CSRA and $2,000 as Irene's personal allowance. The County next found that, as of the date of Irene's application, the couple possessed resources exceeding their $74,822 limit by $14,513. The County accordingly concluded that Irene would not be eligible for Medicaid until the couple's spending reduced their resources by the $14,531 amount. Irene sought a hearing to obtain a higher CSRA, arguing that, because Burnett's monthly income ($1,639) fell below the applicable MMMNA ($1,727), the hearing examiner was obliged to increase Burnett's CSRA. Because a Wisconsin statute adopts the income-first rule, the examiner concluded that he lacked authority to increase Burnett's CSRA: The difference between Burnett's posteligibility income and the MMMNA could be erased if, after achieving eligibility, Irene transferred to Burnett, as a CSMIA, a portion of her monthly income. Because Irene's posteligibility income would be sufficient to allow the transfer, the examiner found no reason to reserve additional assets for Burnett and, consequently, no cause for advancing Irene's Medicaid eligibility. The Circuit Court affirmed, but

the Wisconsin Court of Appeals reversed, concluding that the State's income-first statute conflicts with the MCCA, which, the appeals court held, unambiguously mandates the resources-first method.

Held: The income-first method qualifies as a permissible interpretation of the MCCA. Pp. 489–498.

(a) Neither § 1396r–5(e)(2)(C)'s text nor the MCCA's structure forbids Wisconsin's approach. This case turns on whether the words "community spouse's income" in § 1396r–5(e)(2)(C) may be interpreted to include potential, posteligibility transfers of income from the institutionalized spouse permitted by § 1396r–5(d)(1)(B). According to Blumer, the plain meaning of "community spouse's income" precludes such inclusion; by choosing the possessive modifier "community spouse's," Blumer maintains, Congress clearly expressed its intent that only income actually *possessed* by the community spouse at the time of the hearing may count in the calculation. The Court rejects this argument. Use of the possessive case does not demand construction of the quoted phrase to mean only income actually possessed by, rather than available or attributable to, the community spouse; to the contrary, use of the possessive is often indeterminate. Cf., *e. g.*, *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 739. The Court finds similarly unpersuasive Blumer's argument that the Act's design as a whole precludes use of the income-first method. In this regard, Blumer contends that, because the (e)(2)(C) hearing to obtain an enhanced CSRA occurs at the time an eligibility assessment is conducted, while no CSMIA income may be transferred until after eligibility has been achieved, the Wisconsin statute reverses the priority ordered by the MCCA. The Court disagrees with Blumer's conclusion: The (e)(2)(C) hearing is properly comprehended as a pre-eligibility projection of the couple's posteligibility financial situation; it is not unreasonable for a State to include in its estimation of the "community spouse's income" in that posteligibility period an income transfer the law permits at that time. The same misunderstanding of the (e)(2)(C) hearing also underlies the contention that the income-first method renders meaningless § 1396r–5(b)(1)'s key prohibition against deeming income of the community spouse available to the institutionalized spouse. This argument confuses the inclusion of an anticipated CSMIA in the preeligibility *calculation* of the community spouse's posteligibility income with the actual *transfer* of income permitted by the CSMIA provision. Far from precluding Wisconsin's approach, the MCCA's design offers affirmative support for the income-first method. Subsection (b)(1) has no counterpart prohibiting attribution of the institutionalized spouse's income to the community spouse. Indeed, § 1396r–5(d)(1)(B) specifically permits a transfer of income from the institution-

alized spouse to the community spouse through the CSMIA. Mindful that spouses may be expected to support each other, see, *e. g., Schweiker* v. *Gray Panthers*, 453 U. S. 34, 45, the Court is satisfied that a State reasonably interprets the MCCA by anticipating the CSMIA in the (e)(2)(C) hearing. This conclusion is bolstered by a further consideration: A fair hearing is not limited to a CSRA redetermination, but may also be used to adjust the CSMIA itself, § 1396r–5(e)(2)(A)(i); therefore, it cannot be concluded that the States are barred from taking account of the potential CSMIA in the hearing to increase the CSRA. Pp. 489–495.

(b) Because the parties have not also disputed the permissibility of the resources-first approach, this Court does not definitively resolve that matter. The Court notes, however, that the leeway for state choices urged by Wisconsin and the United States is characteristic of the Medicaid statute, which is designed to advance cooperative federalism. See *Harris* v. *McRae*, 448 U. S. 297, 308. When interpreting other statutes so structured, the Court has left a range of permissible choices to the States, at least where the superintending federal agency has concluded that such latitude is consistent with the statute's aims. See, *e. g., Batterton* v. *Francis*, 432 U. S. 416, 429–431. The Secretary, who possesses authority to prescribe standards relevant here, § 1396a(a)(17), has proposed a rule explicitly recognizing that the MCCA permits both the income-first and resources-first methods. That position statement warrants respectful consideration. Cf., *e. g., Gray Panthers*, 453 U. S., at 43–44. The MCCA affords the States large discretion regarding two related variables: the level of the MMMNA, § 1396r–5(d)(3), and the amount of assets the couple is permitted to retain, § 1396r–5(f)(2)(A). Nothing in the Act indicates that similar latitude is inappropriate with respect to the application of § 1396r–5(e)(2)(C). Eliminating a State's discretion to choose income-first would hinder the State's efforts to strike its own balance in implementing the Act. *Lukhard* v. *Reed*, 481 U. S. 368, 383. States that currently allocate limited funds through income-first would have little choice but to offset the greater expense of the resources-first method by reducing the MMMNA or the standard CSRA. That would benefit the relatively few applicant couples who possess significant resources, while offering nothing to, and perhaps disadvantaging, couples who lack substantial assets. Nothing in the Act contradicts the Secretary's conclusion that such a result is unnecessary and unwarranted. Pp. 495–498.

2000 WI App. 150, 237 Wis. 2d 810, 615 N. W. 2d 647, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which O'CONNOR and SCALIA, JJ., joined, *post*, p. 498.

Maureen McGlynn Flanagan, Assistant Attorney General of Wisconsin, argued the cause for petitioner. With her on the briefs was *James E. Doyle*, Attorney General.

Jeffrey A. Lamken argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson*, *Acting Assistant Attorney General Schiffer*, *Deputy Solicitor General Kneedler*, *William Kanter*, *Bruce G. Forrest*, *Alex Azar II*, *Sheree R. Kanner*, *Henry R. Goldberg*, *Carole F. Kagan*, and *David R. Smith*.

Mitchell Hagopian argued the cause for respondent. With him on the brief were *Eva Shiffrin* and *Sarah Orr*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case requires interpretation of the "spousal impoverishment" provisions of the Medicare Catastrophic Coverage Act of 1988 (MCCA or Act), 102 Stat. 754, 42 U. S. C. § 1396r–5 (1994 ed. and Supp. V), a complex set of instructions made part of the federal Medicaid statute. The

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**Thomas C. Fox* filed a brief for the American Health Care Association as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for AARP et al. by *Rochelle Bobroff*, *Bruce Vignery*, and *Michael Schuster*; for the Ohio State Bar Association et al. by *William J. Browning*, *Eugene Whetzel*, *Rene H. Reixach*, and *A. Frank Johns*; for SeniorLAW/Legal Action of Wisconsin, Inc., by *Carol J. Wessels*; and for the State Bar of Wisconsin's Elder Law Section by *Sara Buscher* and *Barbara J. Becker*.

A brief of *amicus curiae* was filed for the Medicaid agencies of 14 States by *Charles A. Miller*, joined by the Attorneys General of their respective States as follows: *Bill Pryor* of Alabama, *Carla J. Stovall* of Kansas, *John J. Farmer* of New Jersey, *Wayne K. Stenehjem* of North Dakota, *Betty D. Montgomery* of Ohio, *Paul G. Summers* of Tennessee, *Mark L. Shurtleff* of Utah, and *Christine O. Gregoire* of Washington.

spousal impoverishment provisions permit a spouse living at home (called the "community spouse") to reserve certain income and assets to meet the minimum monthly maintenance needs he or she will have when the other spouse (the "institutionalized spouse") is institutionalized, usually in a nursing home, and becomes eligible for Medicaid.

The Act shelters from diminution a standard amount of assets (called the "community spouse resource allowance," "CSRA," or "resource allowance"). The MCCA allows an increase in the standard allowance if either spouse shows, at a state-administered hearing, that the community spouse will not be able to maintain the statutorily defined minimum level of income on which to live after the institutionalized spouse gains Medicaid eligibility.

In determining whether the community spouse is entitled to a higher CSRA, *i. e.*, to shelter assets in excess of the standard resource allowance, Wisconsin, like a majority of other States, uses an "income-first" method. Under that method, the State considers first whether potential income transfers from the institutionalized spouse, which the MCCA expressly permits, will suffice to enable the community spouse to meet monthly needs once the institutionalized spouse qualifies for Medicaid.

Respondent Irene Blumer, whose Medicaid eligibility was delayed by the application of petitioner Wisconsin Department of Health and Family Services' income-first method, challenges that method as inconsistent with the MCCA provision governing upward revision of the community spouse resource allowance, § 1396r–5(e)(2)(C) (1994 ed.). The Wisconsin Court of Appeals upheld her challenge. We reverse that court's judgment. Neither the text of § 1396r–5(e)(2)(C) nor the structure of the MCCA, we conclude, forbids Wisconsin's chosen approach. Consistent with the position adopted by the Secretary of Health and Human Services, we hold that the income-first method represents a permissible interpretation of the Act.

I

A

The federal Medicaid program provides funding to States that reimburse needy persons for the cost of medical care. See Social Security Act, tit. XIX, as added, 79 Stat. 343, and as amended, 42 U. S. C. § 1396 *et seq.* (1994 ed. and Supp. V). "Each participating State develops a plan containing reasonable standards . . . for determining eligibility for and the extent of medical assistance" within boundaries set by the Medicaid statute and the Secretary of Health and Human Services. *Schweiker* v. *Gray Panthers*, 453 U. S. 34, 36–37 (1981) (internal quotation marks omitted); § 1396a(a)(17) (1994 ed.).[1] In formulating those standards, States must "provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, *available* to the applicant." § 1396a(a)(17)(B) (emphasis added).

Because spouses typically possess assets and income jointly and bear financial responsibility for each other, Medicaid eligibility determinations for married applicants have resisted simple solutions. See, *e. g.*, *id.*, at 44–48. Until 1989, the year the MCCA took effect, States generally considered the income of either spouse to be "available" to the other. We upheld this approach in *Gray Panthers*, observing that "from the beginning of the Medicaid program, Congress authorized States to presume spousal support." *Id.*, at 44; see *id.*, at 45 (quoting passage from S. Rep. No. 404, 89th Cong., 1st Sess., pt. 1, p. 78 (1965), including statement that "it is proper to expect spouses to support each other").

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[1] The Secretary has delegated his rulemaking power to the Health Care Financing Administration (HCFA), see Statement of Organization, Functions, and Delegations of Authority for the Dept. of Health and Human Services, Pt. F, 46 Fed. Reg. 13262–13263 (1981), now called the Centers for Medicare and Medicaid Services, see 66 Fed. Reg. 35437 (2001). We nevertheless refer throughout this opinion to the Secretary as the entity charged with interpretive authority.

Similarly, assets held jointly by the couple were commonly deemed "available" in full to the institutionalized spouse.

At the same time, States generally did not treat resources held individually by the community spouse as available to the institutionalized spouse. Accordingly, assets titled solely in the name of the community spouse often escaped consideration in determining the institutionalized spouse's Medicaid eligibility. See H. R. Rep. No. 100–105, pt. 2, pp. 66–67 (1987).

As Congress later found when it enacted the MCCA in 1988, these existing practices for determining a married applicant's income and resources produced unintended consequences. Many community spouses were left destitute by the drain on the couple's assets necessary to qualify the institutionalized spouse for Medicaid and by the diminution of the couple's income posteligibility to reduce the amount payable by Medicaid for institutional care. See *id.*, at 66–68. Conversely, couples with ample means could qualify for assistance when their assets were held solely in the community spouse's name.

In the MCCA, Congress sought to protect community spouses from "pauperization" while preventing financially secure couples from obtaining Medicaid assistance. See *id.*, at 65 (bill seeks to "end th[e] pauperization" of the community spouse "by assuring that the community spouse has a sufficient—but not excessive—amount of income and resources available"). To achieve this aim, Congress installed a set of intricate and interlocking requirements with which States must comply in allocating a couple's income and resources.

Income allocation is governed by §§ 1396r–5(b) and (d). Covering any month in which "an institutionalized spouse is in the institution," § 1396r–5(b)(1) provides that "no income of the community spouse shall be deemed available to the institutionalized spouse." The community spouse's income is thus preserved for that spouse and does not affect

the determination whether the institutionalized spouse qualifies for Medicaid. In general, such income is also disregarded in calculating the amount Medicaid will pay for the institutionalized spouse's care after eligibility is established.

Other provisions specifically address income allocation in the period after the institutionalized spouse becomes Medicaid eligible. Section 1396r–5(b)(2)(A) prescribes, as a main rule, that if payment of income is made solely in the name of one spouse, that income is treated as available only to the named spouse (the "name-on-the-check" rule). Section 1396r–5(d) provides a number of exceptions to that main rule designed to ensure that the community spouse and other dependents have income sufficient to meet basic needs. Among the exceptions, § 1396r–5(d)(3) establishes for the community spouse a "minimum monthly maintenance needs allowance," or MMMNA. The MMMNA is calculated by multiplying the federal poverty level for a couple by a percentage set by the State. Since 1992, that percentage must be at least 150%, §§ 1396r–5(d)(3)(A)–(B), but the resulting MMMNA may not exceed $1,500 per month in 1988 dollars ($2,175 in 2001 dollars), §§ 1396r–5(d)(3)(C), (g).[2]

If the income of the community spouse determined under § 1396r–5(b)(2), which states the "name-on-the-check" rule, is insufficient to yield income equal to or above the MMMNA, § 1396r–5(d)(1)(B) comes into play. Under that provision, the amount of the shortfall is "deducted" from the income of the institutionalized spouse—reducing the amount of income that would otherwise be considered available for the institutionalized spouse's care—so long as that income is actually made available to the community spouse. The

[2] The State must also provide for an "excess shelter allowance" if necessary to cover, *inter alia*, unusually high rent or mortgage payments. §§ 1396r–5(d)(3)(A)(ii), (d)(4). Either spouse may request a hearing to seek a higher MMMNA for the community spouse; such an increase will be allowed if the couple establishes "exceptional circumstances resulting in significant financial duress." § 1396r–5(e)(2)(B).

amount thus reallocated from the institutionalized spouse to the community spouse is called the "community spouse monthly income allowance," or CSMIA, § 1396r–5(d)(1)(B). The provision for this allowance ensures that income transferred from the institutionalized spouse to the community spouse to meet the latter's basic needs is not also considered available for the former's care. As a result, Medicaid will pay a greater portion of the institutionalized spouse's medical expenses than it would absent the CSMIA provision.

Resource allocation is controlled by §§ 1396r–5(c) and (f).[3] For purposes of establishing the institutionalized spouse's Medicaid eligibility,[4] a portion of the couple's assets is reserved for the benefit of the community spouse. § 1396r–5(c)(2). To determine that reserved amount (the CSRA), the total of all of the couple's resources (whether owned jointly or separately) is calculated as of the time the institutionalized spouse's institutionalization commenced; half of that total is then allocated to each spouse (the "spousal share"). § 1396r–5(c)(1)(A). The spousal share allocated to the community spouse qualifies as the CSRA, subject to a ceiling of $60,000 indexed for inflation (in 2001, the ceiling was $87,000) and a floor, set by the State, between $12,000 and $60,000 (also indexed for inflation; in 2001, the amounts were $17,400 and $87,000). §§ 1396r–5(c)(2)(B), (f)(2)(A), (g).[5] The CSRA is considered unavailable to the

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[3] The Act excludes from the definition of "resources" the couple's home, one automobile, personal belongings, and certain other forms of property. §§ 1382b(a) (1994 ed. and Supp. V), 1396r–5(c)(5) (1994 ed.).

[4] Once the institutionalized spouse is determined to be eligible, "no resources [gained by] the community spouse shall be deemed available to the institutionalized spouse." § 1396r–5(c)(4).

[5] As the United States points out, Brief for United States as *Amicus Curiae* 8, n. 4, the MCCA technically defines the CSRA as only a portion of the assets protected for the benefit of the community spouse. Under § 1396r–5(f)(2), the CSRA denotes the amount by which the community spouse's "spousal share" of the couple's resources falls below the resource allowance set by the State pursuant to § 1396r–5(f)(2)(A). Assets cov-

institutionalized spouse in the eligibility determination, but all resources above the CSRA (excluding a small sum set aside as a personal allowance for the institutionalized spouse, currently $2,000, see 20 CFR § 416.1205 (2001)) must be spent before eligibility can be achieved. § 1396r–5(c)(2).

The MCCA provides for a "fair hearing" mechanism through which a couple may challenge the State's determination of a number of elements that affect eligibility for, or the extent of assistance provided under, Medicaid. §§ 1396r–5(e). The dispute in this case centers on § 1396r–5(e)(2)(C), which allows a couple to request a higher CSRA. That section provides in relevant part:

> "If either . . . spouse establishes that the [CSRA] (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the [MMMNA], there shall be substituted, for the [CSRA] under subsection (f)(2) of this section, an amount adequate to provide [the MMMNA]."

If the couple succeeds in obtaining a higher CSRA, the institutionalized spouse may reserve additional resources for posteligibility transfer to the community spouse. The enhanced CSRA will reduce the resources the statute deems

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ering this shortfall are automatically excluded from consideration in the eligibility determination and transferred to the community spouse after eligibility is achieved. §§ 1396r–5(f)(1), (2).

We observe, however, that the parties here, like the court below, refer to the CSRA as the total resources the community spouse is permitted to retain, an amount generally equal to the spousal share. See Brief for Petitioner 7, n. 6; Brief for Respondent 5; 2000 WI App. 150, ¶ 10, 237 Wis. 2d 810, 816, ¶ 10, 615 N. W. 2d 647, 650, ¶ 10. The Secretary of Health and Human Services employs the same broad definition: According to the Secretary, the CSRA means "the amount of a couple's combined jointly and separately-owned resources . . . allocated to the community spouse and considered unavailable to the institutionalized spouse when determining his or her eligibility for Medicaid." 66 Fed. Reg. 46763, 46768 (2001). We adhere to this common understanding of the CSRA throughout this opinion.

available for the payment of medical expenses; accordingly, the institutionalized spouse will become eligible for Medicaid sooner.

In allocating income and resources between spouses for purposes of § 1396r–5(e)(2)(C), the States have employed two divergent methods: an "income-first" method, used by most States; and a "resources-first" method, preferred by the others. The two methods differ in their construction of the term "community spouse's income" in subsection (e)(2)(C). Under the income-first method, "community spouse's income" is defined to include not only the community spouse's actual income at the time of the § 1396r–5(e) fair hearing, but also a potential posteligibility income transfer from the institutionalized spouse—the CSMIA authorized by § 1396r–5(d)(1)(B), see *supra*, at 481–482. Thus, only if the community spouse's preeligibility income *plus* the CSMIA will fall below the MMMNA may the couple reserve a greater portion of assets through an enhanced CSRA.

The resources-first method, by contrast, excludes the CSMIA from consideration. "Community spouse's income" under that approach includes only income actually received by the community spouse at the time of the § 1396r–5(e) hearing, not any anticipated posteligibility income transfer from the institutionalized spouse pursuant to § 1396r–5(d)(1)(B). If the community spouse's income so defined will fall below the MMMNA, the CSRA will be raised to reserve additional assets sufficient to generate income meeting the shortfall, whether or not the CSMIA could also accomplish that task.

In sum, the income-first method, because it takes account of the potential CSMIA, makes it less likely that the CSRA will be increased; it therefore tends to require couples to expend additional resources before the institutionalized spouse becomes Medicaid eligible.

The Secretary of Health and Human Services has issued several statements supporting the income-first method. Initially, the Secretary interpreted the MCCA as requiring

state hearing officers to use that method. See HCFA, Chicago Regional State Letter No. 51–93 (Dec. 1993), App. to Pet. for Cert. 78a–83a. More recently, the Secretary has concluded that the Act permits both income-first and "some other reasonable interpretation of the law." HCFA, Chicago Regional State Letter No. 22–94, p. 2 (July 1994), App. to Pet. for Cert. 89a.

The Secretary has circulated for comment a proposed rule "allow[ing] States the threshold choice of using either the income-first or resources-first method when determining whether the community spouse has sufficient income to meet minimum monthly maintenance needs." 66 Fed. Reg. 46763, 46765 (2001). The proposed rule details the Secretary's reasons for concluding that the Act does not "clearly requir[e] the use of either [method] to the exclusion of the other." *Id.*, at 46767. Accordingly, "in view of the cooperative federalism considerations embodied in the Medicaid program," *id.*, at 46765, the Secretary found it appropriate to "leave to States the decision as to which alternative to use," *id.*, at 46767.[6]

B

The facts of this case illustrate the operation of the Act and the different consequences of the income-first and resources-first approaches. Irene Blumer was admitted to a Wisconsin nursing home in 1994 and applied for Medicaid assistance in 1996 through her husband Burnett. In accord with § 1396r–5(c), the Green County Department of Human Services (County) determined that as of Irene's institutionalization in 1994, the couple's resources amounted to $145,644. Dividing this amount evenly between the Blumers, the

[6] Comments on the proposed rule were to be submitted by November 6, 2001. As the Government related at oral argument, however, the Secretary fears that comments have not reached the agency due to the disruption of the Nation's postal system in October and November 2001. See Tr. of Oral Arg. 16–17. It remains unclear when the Secretary will take further action on the proposed rule. See 66 Fed. Reg. 61625 (2001).

County attributed $72,822 to each spouse. Burnett was allocated this $72,822 share as his CSRA,[7] and Irene was entitled to reserve a personal allowance of $2,000, 20 CFR § 416.1205 (2001). Combining these sums, the County determined that the Blumers could retain $74,822 in assets.

The County next found that, as of the date of Irene's application, the Blumers' resources had been reduced from $145,644 to $89,335. That amount exceeded by $14,513 the couple's resource eligibility threshold. The County accordingly concluded that Irene would not be eligible for Medicaid until the couple's assets were spent down to the $74,822 limit.

Seeking to obtain a higher CSRA, Irene requested a hearing. For purposes of the hearing, Burnett's monthly income amounted to $1,639, consisting of $1,015 in Social Security benefits, $309 from an annuity, and $315 generated by the assets protected in his CSRA.[8] Irene argued that because Burnett's monthly income fell below the applicable MMMNA of $1,727, the examiner was obliged to increase his CSRA, thereby protecting additional assets capable of covering the income shortfall.

Excluding Irene's $2,000 personal allowance, the Blumers' total remaining assets exceeded Burnett's $72,822 standard CSRA, as just noted, by $14,513, an amount generating roughly $63 in monthly income. Attributing that income to Burnett would have raised his monthly income to $1,702,

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[7] Wisconsin sets the CSRA floor at $50,000. Wis. Stat. § 49.455(6)(b)1m (1999–2001). Because Burnett's $72,822 spousal share exceeded that amount but fell below the federally imposed ceiling, which was then $79,020 ($60,000 indexed for inflation to 1996), the spousal share became his CSRA. App. to Pet. for Cert. 28a.

[8] The hearing examiner incorrectly calculated Burnett's relevant monthly income to be $1,702, mistakenly attributing to him all of the $378 in income generated by the full $87,355 in the *couple's* remaining available resources, rather than the $315 yielded by the $72,822 in assets reserved in his CSRA. See *id.*, at 25a; Tr. 8 (Apr. 29, 1997). Although the error does not affect our decision, we use the correct figures (rounded to the nearest dollar) for illustrative purposes.

still $25 short of the MMMNA. Thus, had the hearing officer applied the resources-first method—addressing Burnett's income shortfall by first reserving additional assets for his benefit—the examiner would have increased Burnett's CSRA to encompass all of the Blumers' remaining available resources, and Irene would have become immediately eligible for Medicaid. The remaining $25 deficit in Burnett's income could then have been covered posteligibility by a monthly transfer of income (or CSMIA) from Irene, who at the time of the hearing received $927 per month in Social Security and $336 from a pension.

Wisconsin, however, has adopted the income-first rule by statute:

> "If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the [MMMNA] . . . , the department shall establish an amount to be used under sub. (6)(b)3. that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the [MMMNA] . . . . Except in exceptional cases which would result in financial duress for the community spouse, *the department may not establish an amount to be used under sub. (6)(b)3. unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4)(b).*" Wis. Stat. § 49.455(8)(d) (1999–2000) (emphasis added).

Applying this rule, the hearing examiner concluded that he was without authority to increase Burnett's CSRA: The difference between Burnett's monthly income and the MMMNA could be erased if, after achieving eligibility, Irene made available to Burnett $88 per month from her own income. This, the examiner concluded, Irene would be able to do; ac-

cordingly, there was no need to reserve additional assets for Burnett, and no acceleration in Irene's Medicaid eligibility.

The following table illustrates the differences between the income-first and resources-first methods as applied to the Blumers:

Analysis of the Blumers' Financial Situation	*Income First*	*Resources First*
Initial Resources Allocation:		
Total Resources	$145,644	$145,644
Burnett's Share	$72,822	$72,822
Irene's Share	$72,822	$72,822
Standard Amount of Resources Protected:		
Burnett's Standard CSRA	$72,822	$72,822
Irene's Personal Allowance	$2,000	$2,000
Total	$74,822	$74,822
Assessment of Burnett's Income:		
Pension and Social Security Income	$1,324	$1,324
Income from Standard CSRA	$315	$315
Total	$1,639	$1,639
Wisconsin MMMNA	$1,727	$1,727
Compared to Burnett's Income	−$1,639	−$1,639
Income Shortfall	$88	$88
Satisfying Burnett's Income Shortfall:		
Enhanced CSRA	$0	$14,513
Income from Enhanced CSRA	n/a	$63
Required Income Transfer from Irene (CSMIA)	$88	$25
End Result:		
Total Resources Protected	$74,822	$89,335

The hearing examiner's determination was affirmed by the Circuit Court of Green County. The Wisconsin Court of Appeals, however, reversed. Concluding that the MCCA unambiguously mandates the resources-first method, the Wisconsin appellate court declared that the State's income-first statute impermissibly conflicts with federal law. 2000 WI App. 150, 237 Wis. 2d 810, 615 N. W. 2d 647. The Wisconsin Supreme Court denied discretionary review.

The decision of the Wisconsin Court of Appeals, holding the income-first method impermissible and the resources-first method required, accords with the position adopted by Ohio intermediate appellate courts. See, *e. g.*, *Kimnach* v. *Ohio Dept. of Human Servs.*, 96 Ohio App. 3d 640, 647, 645 N. E. 2d 825, 829–830 (1994), appeal not allowed, 71 Ohio St. 3d 1447, 644 N. E. 2d 409 (1995). Most courts to consider the issue, however, including the highest courts of New York and Massachusetts, as well as two Federal Courts of Appeals, have upheld the Secretary's view that the Act permits the income-first method. See *Cleary ex rel. Cleary* v. *Waldman*, 167 F. 3d 801, 805 (CA3), cert. denied, 528 U. S. 870 (1999); *Chambers* v. *Ohio Dept. of Human Servs.*, 145 F. 3d 793, 801 (CA6), cert. denied, 525 U. S. 964 (1998); *Golf* v. *New York State Div. of Soc. Servs.*, 91 N. Y. 2d 656, 662, 697 N. E. 2d 555, 558 (1998); *Thomas* v. *Commissioner of Div. of Medical Assistance*, 425 Mass. 738, 746, 682 N. E. 2d 874, 879 (1997). We granted certiorari to resolve this conflict, 533 U. S. 927 (2001), and now reverse the judgment of the Wisconsin Court of Appeals.

II

The question presented is whether the income-first prescription of the Wisconsin statute, requiring that potential income transfers from the institutionalized spouse be considered part of the "community spouse's income" for purposes of determining whether a higher CSRA is necessary, conflicts with the MCCA. The answer to that question, the parties agree, turns on whether the words "community spouse's income" in § 1396r–5(e)(2)(C) may be interpreted to include potential, posteligibility transfers of income from the institutionalized spouse permitted by § 1396r–5(d)(1)(B).

In line with the decision of the Wisconsin Court of Appeals, 2000 WI App. 150, ¶ 20, but in conflict with the weight of lower court authority, see, *e. g.*, *Cleary*, 167 F. 3d, at 807; *Chambers*, 145 F. 3d, at 802, Blumer first argues that the

plain meaning of the term "community spouse's income" unambiguously precludes the income-first method. She does not dispute that a monthly allowance regularly transferred from one spouse to the other could qualify as "income" under any relevant definition, but instead focuses on the modifier "community spouse's," contending that "[b]y choosing the possessive . . . Congress clearly expressed its intent that the income *possessed* by the community spouse" is the relevant measure. Brief for Respondent 16. We disagree. Congress' use of the possessive case does not demand construction of "community spouse's income" to mean only income actually possessed by, rather than available or attributable to, the community spouse; to the contrary, the use of the possessive is often indeterminate. See J. Taylor, Possessives in English: An Exploration in Cognitive Grammar 2 (1996) ("[T]he entity denoted by a possessor nominal does not necessarily possess (in the everyday, legalistic sense of the term) the entity denoted by the possessee."); see also *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 739 (1996) (questioning characterization of a statutory term as unambiguous when its meaning has generated a division of opinion in the lower courts).

Blumer maintains as well that the "design of the Act as a whole" precludes use of the income-first method. *K mart Corp.* v. *Cartier, Inc.*, 486 U. S. 281, 291 (1988). She relies heavily, as did the Wisconsin Court of Appeals, 2000 WI App. 150, ¶¶ 21–23, on the Act's distinction between rules governing the initial Medicaid eligibility determination and those that apply posteligibility to the extent-of-assistance calculation. See Brief for Respondent 17–18. Blumer notes that the (e)(2)(C) hearing to obtain an enhanced CSRA occurs only at the time an eligibility assessment is conducted, while no CSMIA income is transferred until after eligibility has been achieved, see *supra*, at 481–482. This sequence, she contends, shows that Congress intended the CSRA enhance-

ment and the CSMIA to operate at discrete stages: The former remedies a shortfall in the income possessed by the community spouse prior to eligibility, while the latter provides further relief posteligibility if the previous CSRA enhancement proves inadequate. See Brief for Respondent 18. Because the Wisconsin statute requires imputation of the CSMIA to the community spouse *before* additional assets may be reserved, Blumer concludes, the statute reverses the priority established by the MCCA.

In accord with the Secretary, we do not agree that Congress circumscribed the (e)(2)(C) hearing in the manner Blumer urges. Although that hearing is conducted preeligibility,[9] its purpose is to anticipate the *posteligibility* financial situation of the couple. The procedure seeks to project what the community spouse's income *will be* when the institutionalized spouse becomes eligible. See Tr. of Oral Arg. 14 (officer conducting (e)(2)(C) hearing makes a calculation that "concerns the post eligibility period"; question is will "the at-home spouse . . . have sufficient income in the post eligibility period, or does the resource allowance need to be jacked up in order to provide that additional income"). The hearing officer must measure that projected income against the MMMNA, a standard that, like the CSMIA, is operative only posteligibility. §§ 1396r–5(b)(2), (d)(3).

In short, if the (e)(2)(C) hearing is properly comprehended as a preeligibility projection of the couple's posteligibility situation, as we think it is, we do not count it unreasonable for a State to include in its estimation of the "community

[9] That the hearing must occur preeligibility is dictated by the mechanics of the process; in order to preserve the assets, if any, that will be necessary for the community spouse's support in the posteligibility period, a couple must know in advance what resources it need not and should not expend before the institutionalized spouse becomes Medicaid eligible.

spouse's income" in that posteligibility period an income transfer that may then occur.[10]

Blumer's skewed view of the (e)(2)(C) hearing also underlies the contention, advanced at oral argument, see Tr. of Oral Arg. 6–10, that the income-first method renders meaningless the Act's key prohibition against deeming income of the community spouse available to the institutionalized one. § 1396r–5(b)(1). According to this argument, including the CSMIA as part of the "community spouse's income" under subsection (e)(2)(C) effectively converts some income of the institutionalized spouse into income of the community spouse. And prior to eligibility, the argument continues, all of the institutionalized spouse's income is considered available for medical expenses. § 1396a(a)(10)(A); 42 CFR § 435.120 (2000). Thus, the theory concludes, under income-first the CSMIA would, as a logical matter, be considered

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[10] Taking issue with this characterization of the (e)(2)(C) hearing, the dissent emphasizes the Wisconsin statute's prescription that no CSRA enhancement will be allowed "unless the institutionalized spouse *makes available* to the community spouse the maximum monthly income allowance permitted," *post*, at 503 (quoting Wis. Stat. § 49.455(8)(d) (1993–1994)) (emphasis supplied by dissent). Only by omitting essential language from the Wisconsin provision can the dissent construe the statute as "requir[ing] a *preeligibility* transfer of income from the institutionalized spouse to the community spouse," *post*, at 503 (emphasis added). The state statute in fact provides that the CSRA may not be enhanced "unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance *permitted under sub. (4)(b).*" Wis. Stat. § 49.455(8)(d) (emphasis added). Subsection (4)(b) is substantially identical to § 1396r–5(d)(1), the very provision of the MCCA that the dissent finds in *conflict* with § 49.455(8)(d). Like § 1396r–5(d)(1), subsection (4)(b) directs that any income transfer from the institutionalized spouse to the community spouse may occur only "after [the] institutionalized spouse is determined . . . to be eligible." Wis. Stat. § 49.455(4)(b) (1999–2000). Because subsection (4)(b) of the Wisconsin statute therefore would not "permit" a preeligibility income transfer from the institutionalized spouse, § 49.455(8)(d) by its terms does not do so either. In drawing a contrary inference based on an incomplete reading, the dissent, not the Court, "neglects to consider the text of the state statute in issue," *post*, at 502.

both "community spouse's income" and "available" for the institutionalized spouse's medical expenses in clear contravention of subsection (b)(1).

This argument confuses the inclusion of a projected CSMIA in the preeligibility *calculation* of the community spouse's posteligibility income with the actual *transfer* of income contemplated by the CSMIA provision. The (e)(2)(C) hearing is, again, simply a projection of the state of affairs that will exist posteligibility. The theoretical incorporation of a CSMIA into the community spouse's future income at that hearing has no effect on the preeligibility allocation of income between the spouses. A CSMIA becomes part of the community spouse's income only when it is in fact transferred to that spouse, § 1396r–5(d)(1)(B), which may not occur until "[a]fter [the] institutionalized spouse is determined . . . to be eligible." § 1396r–5(d)(1). At that point, the actual CSMIA is deducted from the institutionalized spouse's income, *ibid.*, and is no longer available for medical expenses. Thus, at all times the rule of subsection (b)(1) is honored, for at no time is any income of the community spouse simultaneously deemed available to the institutionalized spouse.[11]

Far from precluding Wisconsin's chosen approach, the MCCA's design offers affirmative support for the permissibility of the income-first method. Subsection (b)(1), pro-

[11] Blumer also contends that § 1396r–5(a)(3) forbids the income-first method because that provision expressly leaves in place the existing Supplemental Security Income (SSI) program rules for determining what constitutes income and resources, including the standards and methods used in such determinations. See Brief for Respondent 19–22. In particular, Blumer emphasizes that subsection (a)(3) imposes the SSI requirement, codified at § 1396a(r)(2)(B), that States may not adopt income-assessment standards that reduce the number of people eligible for SSI. See *id.*, at 21. As Wisconsin points out, however, the issue carved out by § 1396r–5(a)(3)—what qualifies as income or resources—is not implicated by this case. Reply Brief 5; see *supra*, at 490. At issue here is the different question, governed entirely by the MCCA, of whether money that is indisputably "income" may be attributed to the community spouse.

hibiting attribution of the community spouse's income to the institutionalized spouse, has no counterpart running in the opposite direction. Indeed, the Act specifically provides for a transfer of income from the institutionalized spouse to the community spouse through the CSMIA. § 1396r–5(d)(1)(B). Mindful of the Medicaid program's background principle that "it is proper to expect spouses to support each other," *Gray Panthers*, 453 U. S., at 45 (quoting S. Rep. No. 404, pt. 1, at 78) (internal quotation marks omitted), we are satisfied that a State reasonably interprets the MCCA by anticipating the CSMIA in the (e)(2)(C) hearing.[12]

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[12] According to the dissent, anticipating the CSMIA in this manner effectively "mandates an income transfer that Congress left optional," *post*, at 503–504. The dissent presumably means that the CSMIA, once projected as part of the "community spouse's income" in the (e)(2)(C) hearing, must in fact be transferred posteligibility lest the community spouse receive income below the statutorily guaranteed MMMNA. As this case illustrates, however, application of the resources-first method may yield the same situation. If the hearing examiner had granted Irene's request to increase Burnett's CSRA without regard to a potential CSMIA, Burnett's income would still have fallen $25 short of the MMMNA, see *supra*, at 486–487. A posteligibility income transfer in that amount would therefore have been "mandatory" as the dissent understands that term, *post*, at 504. Thus, the dissent's issue is not with the income-first method, but rather with the friction between Congress' decision to guarantee a minimum level of income for the community spouse and its failure to mandate the transfer of income necessary in many cases to realize that guarantee.

Similarly, in faulting the income-first method for the possibility that its projections may prove inaccurate, see *ibid.*, the dissent attacks a problem inherent in the design of the Act itself. As long as the (e)(2)(C) hearing is conducted preeligibility, see *supra*, at 491, n. 9, the hearing examiner must inevitably make predictions, and those predictions "may not ultimately come to fruition," *post*, at 504. Under the resources-first method, just as under income-first, the examiner must decide whether to enhance the CSRA based on speculation about the community spouse's income in the posteligibility period. If that income diminishes unexpectedly, the community spouse may be left without the level of income that the examiner "predicted" at the (e)(2)(C) hearing, and on the basis of which the examiner denied a CSRA enhancement.

We further note that subsection (e), governing fair hearings in general, is not limited to a redetermination of the CSRA. It also permits a hearing if the couple is dissatisfied with:

> "(i) the [CSMIA];
>
> "(ii) the amount of monthly income otherwise available to the community spouse . . . ;
>
> "(iii) the computation of the spousal share of resources under subsection (c)(1) of this section; [and]
>
> "(iv) the attribution of resources under subsection (c)(2) of this section." § 1396r–5(e)(2)(A).

Given that the CSMIA itself may be adjusted in a fair hearing under subsection (e)(2)(A)(i), we cannot conclude that the States are forbidden to consider the projected CSMIA in the related hearing, authorized by subsection (e)(2)(A)(v), to increase the CSRA. Accord, *Cleary*, 167 F. 3d, at 810.

III

We thus hold that the income-first method is a permissible means of implementing the Act. The parties here have not also disputed the permissibility of the resources-first approach. We therefore do not definitively resolve that matter, although we note that the leeway for state choices urged by both Wisconsin and the United States is characteristic of Medicaid.

The Medicaid statute, in which the MCCA is implanted, is designed to advance cooperative federalism. See *Harris* v. *McRae*, 448 U. S. 297, 308 (1980). When interpreting other statutes so structured, we have not been reluctant to leave a range of permissible choices to the States, at least where the superintending federal agency has concluded that such latitude is consistent with the statute's aims. In *Batterton* v. *Francis*, 432 U. S. 416, 429 (1977), for example, we upheld a regulation promulgated by the Secretary of Health, Education, and Welfare affording the States dis-

cretion in the implementation of the Aid to Families with Dependent Children (AFDC) unemployed parent program. The challenged regulation allowed States to cover or exclude from coverage persons whose unemployment resulted from participation in a labor dispute or whose conduct would disqualify them for benefits under the State's compensation law. Noting that the AFDC program involved the "concept of cooperative federalism," *id.*, at 431, we concluded that the Secretary had the authority to "recognize some local options in determining . . . eligibility," *id.*, at 430. Similarly, in *Lukhard* v. *Reed*, 481 U. S. 368 (1987), a plurality of this Court concluded that Virginia's policy of treating personal injury awards as income rather than resources under the AFDC program was reasonable and consistent with federal law, see *id.*, at 377–381. The superintending federal agency, the plurality pointed out, had for many years permitted Virginia's choice while allowing other States to treat such awards as resources. *Id.*, at 378.

The Secretary of Health and Human Services, who possesses the authority to prescribe standards relevant to the issue here, § 1396a(a)(17),[13] has preliminarily determined that the MCCA permits both the income-first and resources-first methods. See 66 Fed. Reg. 46763, 46767 (2001); HCFA, Chicago Regional State Letter No. 22–94, at 2, App. to Pet.

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[13] Blumer argues that § 1396r–5(a)(1) divests the Secretary of the authority granted under § 1396a(a)(17) to prescribe standards governing the allocation of income and resources for Medicaid purposes. See Brief for Respondent 39. Subsection (a)(1) states that the *eligibility* provisions of the MCCA "supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them," but says nothing about the regulatory authority of the Secretary under § 1396a(a)(17). We have long noted Congress' delegation of extremely broad regulatory authority to the Secretary in the Medicaid area, see *Schweiker* v. *Gray Panthers*, 453 U. S. 34, 43 (1981); *Batterton* v. *Francis*, 432 U. S. 416, 425 (1977), and we will not conclude that Congress implicitly withdrew that authority here.

for Cert. 89a.[14] In a recently proposed rule, the Secretary declared that "in the spirit of Federalism," the Federal Government "should leave to States the decision as to which alternative [income-first or resources-first] to use." 66 Fed. Reg. 46763, 46767 (2001).

The Secretary's position warrants respectful consideration. Cf. *United States* v. *Mead Corp.*, 533 U. S. 218 (2001); *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 512 (1994) (reliance on Secretary's "significant expertise" particularly appropriate in the context of "a complex and highly technical regulatory program" (internal quotation marks omitted)); *Gray Panthers*, 453 U. S., at 43–44 (Secretary granted "exceptionally broad authority" under the Medicaid statute). As Blumer acknowledges, Brief for Respondent 31–32, the MCCA affords large discretion to the States on two related variables: the level of the MMMNA accorded the community spouse, § 1396r–5(d)(3), see *supra*, at 481, and the amount of assets the couple is permitted to retain, § 1396r–5(f)(2)(A), see *supra*, at 482–483. Nothing in the Act indicates to us that similar latitude is inappropriate with respect to the application of subsection (e)(2)(C).

Eliminating the discretion to choose income-first would hinder a State's efforts to "strik[e] its own balance" in the implementation of the Act. *Lukhard*, 481 U. S., at 383. States that currently allocate limited funds through the income-first approach would have little choice but to offset the greater expense of the resources-first method by reducing the MMMNA or the standard CSRA. Such an alteration would benefit couples seeking Medicaid who possess sig-

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[14] Contrary to the dissent's suggestion, *post*, at 505, the Secretary has never wavered from his position that the income-first method represents at least a permissible interpretation of the Act. See HCFA, Chicago Regional State Letter No. 51–93 (Dec. 1993), App. to Pet. for Cert. 78a–83a; HCFA, Chicago Regional State Letter No. 22–94, p. 2 (July 1994), App. to Pet. for Cert. 89a; 66 Fed. Reg. 46763, 46765 (2001).

nificant resources—"not . . . a lot of people" by Blumer's own account, Tr. of Oral Arg. 38—while offering nothing to, and perhaps disadvantaging, those who do not, couples for whom the other variables provide the primary protection against spousal impoverishment. Blumer would thus have us conclude that Congress pushed States toward altering standards that affect every person covered by the MCCA in order to install, without any increased spending, a resources-first rule that affects only those whose assets exceed the formula resources allowance. We perceive nothing in the Act contradicting the Secretary's conclusion that such a result is unnecessary and unwarranted.

* * *

For the reasons stated, the judgment of the Wisconsin Court of Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE O'CONNOR and JUSTICE SCALIA join, dissenting.

The Medicare Catastrophic Coverage Act of 1988 (MCCA), 42 U. S. C. § 1396r–5 (1994 ed. and Supp. V), provides important protections for married couples who need financial assistance when one spouse is institutionalized in a nursing home. Eligibility for financial assistance in paying nursing home costs is limited by a ceiling on the couple's resources and a ceiling on their income. The MCCA responded to pre-1988 eligibility rules that often required both spouses to deplete their combined resources before an institutionalized spouse became eligible for benefits. In order to prevent the "pauperization" of the spouse who remains at home (the "community spouse"), the 1988 Act gives couples two important rights that are implicated by this case. H. R. Rep.

No. 100–105, pt. 2, pp. 66–67 (1987). The first is a *preeligibility* right of the spouse who remains at home (the "community spouse") to retain a defined share of their joint resources, called the "community spouse resource allowance" (CSRA).[1] The second is a *posteligibility* right of the institutionalized spouse to use a defined share of her income for purposes other than paying for the cost of her care.

The two statutory rights involved in this case are designed, in part, to assure that the community spouse's income may be maintained at a minimum level—the "minimum monthly maintenance needs allowance" (MMMNA).[2] To safeguard these rights and this minimum level of subsistence for the community spouse, the statute provides for a "fair hearing," at which a couple seeking medical assistance for an institutionalized spouse may challenge several calculations that are used to determine eligibility for Medicaid. 42 U. S. C. § 1396r–5(e)(2) (1994 ed.). The determination of the CSRA is one such calculation that may be challenged. § 1396r–5(e)(2)(A)(v).

During this preeligibility hearing, if the institutionalized spouse has income-producing resources and the community spouse's income is below the MMMNA, the provision in issue in this case, § 1396r–5(e)(2)(C), is applicable. By its terms, it allows the institutionalized spouse to transfer sufficient resources to the community spouse to provide him with an

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[1] A portion of the couple's assets is allocated to the community spouse pursuant to a formula found in 42 U. S. C. § 1396r–5(C)(1)(A) (1994 ed.). This allocated amount, the CSRA, is reserved for the benefit of the community spouse and is not considered in establishing assistance eligibility for the institutionalized spouse. § 1396r–5(c)(2).

[2] Section 1396r–5(d)(3) sets the boundaries of the MMMNA. Although this provision grants States some flexibility in setting the MMMNA, it must be set no lower than 150% of the poverty level for a family of two. In 2001, States could set the MMMNA between $1,406.25 and $2,175 per month. Wisconsin established its MMMNA at $1,935.

income equal to the MMMNA. Since only those resources that remain with the institutionalized spouse are counted for eligibility purposes, § 1396r–5(e)(2)(C) enables some institutionalized spouses who would otherwise be ineligible to qualify for financial assistance.

The text of § 1396r–5(e)(2)(C) is straightforward. As its caption indicates, it deals only with the "[r]evision of community spouse resource allowance" and it is applicable when an eligibility determination is made. It provides:

> "If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance."

Thus, under the plain language of the statute, if the CSRA that has been calculated in accordance with § 1396r–5(c)(1)(A) is insufficient to raise the community spouse's income to the MMMNA level, there "shall be substituted" a new CSRA that will produce sufficient income. § 1396r–5(e)(2)(C).

With respect to income, the sole provision in the federal statute that authorizes a transfer of income from the institutionalized spouse to the community spouse applies only *after* the eligibility determination has been made. § 1396r–5(d)(1). It authorizes the institutionalized spouse to use some of her income to take care of her own needs, to provide support for the community spouse when his income is below the MMMNA, and to help other family members before paying for her care. But as the text of the provision expressly states, it only applies "[a]fter an institutionalized

spouse is determined or redetermined to be eligible for medical assistance."[3]

Wisconsin has passed a statute that prohibits the resource transfer authorized by § 1396r–5(e)(2)(C) unless the institutionalized spouse first transfers any available income to the community spouse.[4] Unless this prohibition is authorized by federal law, it is plainly invalid because it qualifies the federal right created by § 1396r–5(e)(2)(C).

There are two possible bases for arguing that the Wisconsin statute is consistent with § 1396r–(e)(2)(C): first, that despite the express limitation in § 1396r–5(d) to deductions authorized "[a]fter an institutionalized spouse is determined or redetermined to be eligible," Congress really meant "before or after"; and second, that when Congress used the term "community spouse's income" in § 1396r–5(e)(2)(C), it really

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[3] "Allowances to be offset from income of institutionalized spouse

"After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member. . . ." § 1396r–5(d)(1).

[4] Wisconsin Stat. § 49.455(8)(d) (1993–1994) provides in part:

"Except in exceptional cases which would result in financial duress for the community spouse, the department may not establish an amount to be used under sub. (6)(b)3. unless the institutionalized spouse makes available to the community spouse the maximum monthly income allowance permitted under sub. (4)(b) or, if the institutionalized spouse does not have sufficient income to make available to the community spouse the maximum monthly income allowance permitted under sub. (4)(b), unless the institutionalized spouse makes all of his or her income . . . available to the community spouse . . . ."

meant "community spouse's income plus any deduction from the institutionalized spouse's income that may in the future be made available to him." As is clear, both of these arguments require altering the plain text of the statute.

Rather than admitting that its reading strains the text of the MCCA, the Court engages in an analytical sleight of hand: It conceives of the transfer of income that is commanded by the Wisconsin statute as a condition of eligibility, not as a *required* transfer, but only as a *prediction* of things to come. *Ante*, at 491–492 ("In short, if the (e)(2)(C) hearing is properly comprehended as a preeligibility projection of the couple's posteligibility situation, as we think it is, we do not count it unreasonable for a State to include in its estimation of the 'community spouse's income' in that posteligibility period an income transfer that will then occur"). The Court's temporal manipulation of the § 1396r–5(e)(2)(C) hearing is innovative; but it is wrong for at least three reasons.

First, in speculating that Wisconsin does not actually require a preeligibility transfer, but only predicts a future income transfer, the Court neglects to consider the text of the state statute in issue. In holding that Wisconsin's "income-first" approach is permissible, the Court states: "The *theoretical* incorporation of a CSMIA [Community Spouse Monthly Income Allowance] into the community spouse's future income at that hearing has no effect on the preeligibility allocation of income between the spouses. *A CSMIA becomes part of the community spouse's income only when it is in fact transferred to that spouse, § 1396r–5(d)(1)(B), which may not occur until '[a]fter [the] institutionalized spouse is determined . . . to be eligible.'* § 1396r–5(d)(1)." *Ante*, at 493 (emphasis added). The Court's own statement, which replaces the statutory phrase *"made available to"* from § 1396r–5(d)(1)(B) with the phrase "transferred to," exposes precisely why the Wisconsin statute is in conflict with the MCCA. As the text of the Wisconsin statute makes clear, there is nothing "theoretical" about the income

transfer that it requires: "[T]he department may not [substitute an increased CSRA] unless the institutionalized spouse *makes available* to the community spouse the maximum monthly income allowance permitted." Wis. Stat. § 49.455(8)(d) (1999–2000) (emphasis added). The state statute requires that an institutionalized spouse "make available" income to the community spouse. In other words, Wisconsin requires a preeligibility transfer of income from the institutionalized spouse to the community spouse. Because 42 U. S. C. § 1396r–5(d)(1) permits the income transfer to take place only after eligibility has been established, the Wisconsin statue is in conflict with the plain language of the MCCA.[5]

Second, although the MCCA permits an institutionalized spouse to transfer income to the community spouse after eligibility has been established, it by no means requires that she do so.[6] Thus, by requiring the CSMIA transfer, and therefore not increasing the CSRA to meet the community spouse's income needs, the Wisconsin statute mandates an

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[5] The Court asserts in response that the dissent fails to consider that the Wisconsin statute only requires the institutionalized spouse to make available that which she is "permit[ed]" to make available pursuant to subsection (4)(b). *Ante*, at 492, n. 10. But subsection (4)(b), which is substantially identical to § 1396r–5(d)(1), describes the amount of income that can be made available posteligibility, whereas subsection (8)(d) of the Wisconsin statute requires that it be made available as a condition of eligibility. In overlooking the difference between the permissive character of the federal provision and the mandatory character of the Wisconsin statute, the Court's response continues to ignore the text of the Wisconsin statute.

[6] Counsel for the Wisconsin Department of Health and Family Services conceded at oral argument that the income transfer is not required. Tr. of Oral Arg. 14 ("It doesn't explicitly require the transfer"). The Court itself waffles between describing the income transfer as something that has the "potential" to occur, *ante*, at 489, and something that "will be," *ante*, at 491. Nevertheless, the Court's analysis of the 42 U. S. C. § 1396r–5(e)(2)(C) hearing clearly contemplates a mandatory posteligibility transfer.

income transfer that Congress left optional. Furthermore, if the Wisconsin statute could be interpreted to require only a prediction, rather than a mandatory preeligibility transfer, there are several plausible reasons why such a "prediction" may not ultimately come to fruition. For example, the institutionalized spouse might choose not to contribute to the support of the community spouse. Alternatively, the institutionalized spouse's income could fluctuate over time and may not in a given month be sufficient to augment the community spouse's monthly income. Finally, a hearing examiner's finding of ineligibility—based on a fictional prediction that a posteligibility transfer of income would occur—might (as it did in this case) actually prevent the posteligibility transfer from occurring.[7] If any of these events occurs, a primary purpose of the statute—ensuring the financial security of the community spouse—will have been undermined. Thus, either the Wisconsin statute mandates the income transfer, in which case it contradicts the MCCA, or it diminishes the § 1396r–5(e)(2)(C) hearing into a thought experiment that is inconsistent with the purpose of the statute.

Third, an important posteligibility provision of the statute, which expresses the "name-on-the-check" policy of the MCCA, also exposes why the Wisconsin statute is in conflict with the federal one. Section 1396r–5(b)(2)(A)(i) states: "[Posteligibility,] if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that

[7] Under the hearing examiner's ruling in this case, the predicted posteligibility transfer of income could not occur because he found respondent ineligible for assistance. It is ironic, to say the least, that the predicate for the so-called "income first" approach is a hypothetical transfer of income that is actually precluded by the application of that approach. The effect of the Wisconsin statute in this case is to preclude the reallocation of resources that (a) is expressly authorized by § 1396r–5(e)(2)(C), (b) would establish respondent's eligibility, and (c) make it possible for the posteligibility transfer to take place.

respective spouse." By mandating an income transfer from the institutionalized spouse to the community spouse, the Wisconsin statute effectively treats the institutionalized spouse's income as that of the community spouse, and, therefore, violates the prohibition of § 1396r–5(b)(2)(A)(i).

As a final matter, the Court pays "respectful consideration" to an opinion letter and policy memoranda in which the Secretary of Health and Human Services "'in the spirit of Federalism'" has allowed the States to use either an income-first or a resources-first approach. *Ante*, at 497. The weight that should be accorded to such a document depends "'upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'" *United States* v. *Mead Corp.*, 533 U. S. 218, 228 (2001). The Secretary has taken inconsistent positions on this issue over time, see App. to Pet. for Cert. 78a–90a, and the current opinion letter offers no analysis of the potentially conflicting provisions in the federal and state statutes. It is devoid of any "'power to persuade.'"

The Court concludes its opinion with an explanation of why the income-first rule may represent a better policy choice than the resources-first rule. It is not, however, a policy choice that Congress made. Indeed, the fact that the text of the federal statute expressly authorizes the resources-first approach without mentioning the income-first rule commanded by the Wisconsin statute, at the very least, identifies a congressional preference for the former.

This statute is not ambiguous. The resource adjustment authorized by § 1396r–5(e)(2)(C) is not conditioned on any prior or predicted transfer of income. The state statute imposing that condition is therefore invalid. Because I agree with the analysis of the statute in the opinion of the Wisconsin Court of Appeals, I would affirm its judgment. I therefore respectfully dissent.

Syllabus

SWIERKIEWICZ *v.* SOREMA N. A.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 00–1853. Argued January 15, 2002—Decided February 26, 2002

Petitioner, a 53-year-old native of Hungary, filed this suit against respondent, his former employer, alleging that he had been fired on account of his national origin in violation of Title VII of the Civil Rights Act of 1964 and on account of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA). In affirming the District Court's dismissal of the complaint, the Second Circuit relied on its settled precedent requiring an employment discrimination complaint to allege facts constituting a prima facie case of discrimination under the framework set forth in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792, 802. The court held that petitioner had failed to meet his burden because his allegations were insufficient as a matter of law to raise an inference of discrimination.

Held: An employment discrimination complaint need not contain specific facts establishing a prima facie case under the *McDonnell Douglas* framework, but instead must contain only "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. Rule Civ. Proc. 8(a)(2). The *McDonnell Douglas* framework—which requires the plaintiff to show (1) membership in a protected group, (2) qualification for the job in question, (3) an adverse employment action, and (4) circumstances supporting an inference of discrimination—is an evidentiary standard, not a pleading requirement. See, *e. g.*, 411 U. S., at 800. The Court has never indicated that the requirements for establishing a prima facie case apply to pleading. Moreover, the *McDonnell Douglas* framework does not apply where, for example, a plaintiff is able to produce direct evidence of discrimination. See *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 121. Under the Second Circuit's heightened pleading standard, however, a plaintiff without direct evidence at the time of his complaint must plead a prima facie case of discrimination even though discovery might uncover such direct evidence. It seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered. Moreover, the precise requirements of the prima facie case can vary with the context and were "never intended to be rigid, mechanized, or ritualistic." *Furnco Constr. Corp.* v. *Waters*, 438

Syllabus

U. S. 567, 577. It may be difficult to define the precise formulation of the required prima facie case in a particular case before discovery has unearthed relevant facts and evidence. Consequently, the prima facie case should not be transposed into a rigid pleading standard for discrimination cases. Imposing the Second Circuit's heightened standard conflicts with Rule 8(a)'s express language, which requires simply that the complaint "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley* v. *Gibson*, 355 U. S. 41, 47. A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Hishon* v. *King & Spalding*, 467 U. S. 69, 73. Petitioner's complaint easily satisfies Rule 8(a)'s requirements because it gives respondent fair notice of the basis for his claims and the grounds upon which they rest. In addition, it states claims upon which relief could be granted under Title VII and the ADEA. Thus, the complaint is sufficient to survive respondent's motion to dismiss. Pp. 510–515.

5 Fed. Appx. 63, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.

Harold I. Goodman argued the cause and filed briefs for petitioner.

Jeffrey P. Minear argued the cause for the United States et al. as *amici curiae* urging reversal. On the brief were *Solicitor General Olson, Assistant Attorney General Boyd, Deputy Solicitor General Clement, Patricia A. Millett,* and *Philip B. Sklover.*

Lauren Reiter Brody argued the cause for respondent. With her on the brief was *Frances Kulka Browne.**

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*Briefs of *amici curiae* urging reversal were filed for the Lawyers' Committee for Civil Rights Under Law by *John A. Payton, Gary T. Johnson, Norman Redlich, Barbara R. Arnwine, Thomas J. Henderson,* and *Nancy L. Perkins;* and for the National Employment Lawyers Association et al. by *Paul W. Mollica* and *Paula A. Brantner.*

Briefs of *amici curiae* urging affirmance were filed for the Center for Individual Freedom by *Linda Van Winkle Deacon* and *Julie Arias Young;* and for the Equal Employment Advisory Council by *Ann Elizabeth Reesman* and *Katherine Y. K. Cheung.*

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the question whether a complaint in an employment discrimination lawsuit must contain specific facts establishing a prima facie case of discrimination under the framework set forth by this Court in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973). We hold that an employment discrimination complaint need not include such facts and instead must contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).

I

Petitioner Akos Swierkiewicz is a native of Hungary, who at the time of his complaint was 53 years old.[1] In April 1989, petitioner began working for respondent Sorema N. A., a reinsurance company headquartered in New York and principally owned and controlled by a French parent corporation. Petitioner was initially employed in the position of senior vice president and chief underwriting officer (CUO). Nearly six years later, François M. Chavel, respondent's Chief Executive Officer, demoted petitioner to a marketing and services position and transferred the bulk of his underwriting responsibilities to Nicholas Papadopoulo, a 32-year-old who, like Mr. Chavel, is a French national. About a year later, Mr. Chavel stated that he wanted to "energize" the underwriting department and appointed Mr. Papadopoulo as CUO. Petitioner claims that Mr. Papadopoulo had only one year of underwriting experience at the time he was promoted, and therefore was less experienced and less qualified to be CUO than he, since at that point he had 26 years of experience in the insurance industry.

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[1] Because we review here a decision granting respondent's motion to dismiss, we must accept as true all of the factual allegations contained in the complaint. See, *e. g.*, *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 164 (1993).

Following his demotion, petitioner contends that he "was isolated by Mr. Chavel . . . excluded from business decisions and meetings and denied the opportunity to reach his true potential at SOREMA." App. 26. Petitioner unsuccessfully attempted to meet with Mr. Chavel to discuss his discontent. Finally, in April 1997, petitioner sent a memo to Mr. Chavel outlining his grievances and requesting a severance package. Two weeks later, respondent's general counsel presented petitioner with two options: He could either resign without a severance package or be dismissed. Mr. Chavel fired petitioner after he refused to resign.

Petitioner filed a lawsuit alleging that he had been terminated on account of his national origin in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq.* (1994 ed. and Supp. V), and on account of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. §621 *et seq.* (1994 ed. and Supp. V). App. 28. The United States District Court for the Southern District of New York dismissed petitioner's complaint because it found that he "ha[d] not adequately alleged a prima facie case, in that he ha[d] not adequately alleged circumstances that support an inference of discrimination." *Id.*, at 42. The United States Court of Appeals for the Second Circuit affirmed the dismissal, relying on its settled precedent, which requires a plaintiff in an employment discrimination complaint to allege facts constituting a prima facie case of discrimination under the framework set forth by this Court in *McDonnell Douglas*, *supra*, at 802. See, *e. g.*, *Tarshis* v. *Riese Organization*, 211 F. 3d 30, 35–36, 38 (CA2 2000); *Austin* v. *Ford Models, Inc.*, 149 F. 3d 148, 152–153 (CA2 1998). The Court of Appeals held that petitioner had failed to meet his burden because his allegations were "insufficient as a matter of law to raise an inference of discrimination." 5 Fed. Appx. 63, 65 (CA2 2001). We granted certiorari, 533 U. S. 976 (2001), to resolve a split among the Courts

of Appeals concerning the proper pleading standard for employment discrimination cases,[2] and now reverse.

II

Applying Circuit precedent, the Court of Appeals required petitioner to plead a prima facie case of discrimination in order to survive respondent's motion to dismiss. See 5 Fed. Appx., at 64–65. In the Court of Appeals' view, petitioner was thus required to allege in his complaint: (1) membership in a protected group; (2) qualification for the job in question; (3) an adverse employment action; and (4) circumstances that support an inference of discrimination. *Ibid.*; cf. *McDonnell Douglas*, 411 U. S., at 802; *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248, 253–254, n. 6 (1981).

The prima facie case under *McDonnell Douglas*, however, is an evidentiary standard, not a pleading requirement. In *McDonnell Douglas*, this Court made clear that "[t]he critical issue before us concern[ed] the order and allocation *of proof* in a private, non-class action challenging employment discrimination." 411 U. S., at 800 (emphasis added). In subsequent cases, this Court has reiterated that the prima facie case relates to the employee's burden of presenting evidence that raises an inference of discrimination. See *Burdine*, *supra*, at 252–253 ("In *[McDonnell Douglas,]* we set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment. First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of

[2] The majority of Courts of Appeals have held that a plaintiff need not plead a prima facie case of discrimination under *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973), in order to survive a motion to dismiss. See, *e. g.*, *Sparrow* v. *United Air Lines, Inc.*, 216 F. 3d 1111, 1114 (CADC 2000); *Bennett* v. *Schmidt*, 153 F. 3d 516, 518 (CA7 1998); *Ring* v. *First Interstate Mortgage, Inc.*, 984 F. 2d 924 (CA8 1993). Others, however, maintain that a complaint must contain factual allegations that support each element of a prima facie case. In addition to the case below, see *Jackson* v. *Columbus*, 194 F. 3d 737, 751 (CA6 1999).

discrimination" (footnotes omitted)); 450 U. S., at 255, n. 8 ("This evidentiary relationship between the presumption created by a prima facie case and the consequential burden of production placed on the defendant is a traditional feature of the common law").

This Court has never indicated that the requirements for establishing a prima facie case under *McDonnell Douglas* also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss. For instance, we have rejected the argument that a Title VII complaint requires greater "particularity," because this would "too narrowly constric[t] the role of the pleadings." *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U. S. 273, 283, n. 11 (1976). Consequently, the ordinary rules for assessing the sufficiency of a complaint apply. See, *e. g.*, *Scheuer* v. *Rhodes*, 416 U. S. 232, 236 (1974) ("When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

In addition, under a notice pleading system, it is not appropriate to require a plaintiff to plead facts establishing a prima facie case because the *McDonnell Douglas* framework does not apply in every employment discrimination case. For instance, if a plaintiff is able to produce direct evidence of discrimination, he may prevail without proving all the elements of a prima facie case. See *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 121 (1985) ("[T]he *McDonnell Douglas* test is inapplicable where the plaintiff presents direct evidence of discrimination"). Under the Second Circuit's heightened pleading standard, a plaintiff without direct evidence of discrimination at the time of his complaint must plead a prima facie case of discrimination, even though discovery might uncover such direct evidence. It thus seems incongruous to require a plaintiff, in order to

survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered.

Moreover, the precise requirements of a prima facie case can vary depending on the context and were "never intended to be rigid, mechanized, or ritualistic." *Furnco Constr. Corp.* v. *Waters*, 438 U. S. 567, 577 (1978); see also *McDonnell Douglas, supra*, at 802, n. 13 ("[T]he specification . . . of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations"); *Teamsters* v. *United States*, 431 U. S. 324, 358 (1977) (noting that this Court "did not purport to create an inflexible formulation" for a prima facie case); *Ring* v. *First Interstate Mortgage, Inc.*, 984 F. 2d 924, 927 (CA8 1993) ("[T]o measure a plaintiff's complaint against a particular formulation of the prima facie case at the pleading stage is inappropriate"). Before discovery has unearthed relevant facts and evidence, it may be difficult to define the precise formulation of the required prima facie case in a particular case. Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases.

Furthermore, imposing the Court of Appeals' heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2), which provides that a complaint must include only "a short and plain statement of the claim showing that the pleader is entitled to relief." Such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley* v. *Gibson*, 355 U. S. 41, 47 (1957). This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. See *id.*, at 47–48; *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 168–169 (1993). "The provisions for discov-

ery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in federal practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court." 5 C. Wright & A. Miller, Federal Practice and Procedure § 1202, p. 76 (2d ed. 1990).

Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake.[3] This Court, however, has declined to extend such exceptions to other contexts. In *Leatherman* we stated: "[T]he Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Expressio unius est exclusio alterius.*" 507 U. S., at 168. Just as Rule 9(b) makes no mention of municipal liability under Rev. Stat. § 1979, 42 U. S. C. § 1983 (1994 ed., Supp. V), neither does it refer to employment discrimination. Thus, complaints in these cases, as in most others, must satisfy only the simple requirements of Rule 8(a).[4]

Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides

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[3] "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally."

[4] These requirements are exemplified by the Federal Rules of Civil Procedure Forms, which "are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate." Fed. Rule Civ. Proc. 84. For example, Form 9 sets forth a complaint for negligence in which plaintiff simply states in relevant part: "On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway."

that "[a]ll pleadings shall be so construed as to do substantial justice." Given the Federal Rules' simplified standard for pleading, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon* v. *King & Spalding*, 467 U. S. 69, 73 (1984). If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim. See *Conley*, *supra*, at 48 ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits").

Applying the relevant standard, petitioner's complaint easily satisfies the requirements of Rule 8(a) because it gives respondent fair notice of the basis for petitioner's claims. Petitioner alleged that he had been terminated on account of his national origin in violation of Title VII and on account of his age in violation of the ADEA. App. 28. His complaint detailed the events leading to his termination, provided relevant dates, and included the ages and nationalities of at least some of the relevant persons involved with his termination. *Id.*, at 24–28. These allegations give respondent fair notice of what petitioner's claims are and the grounds upon which they rest. See *Conley*, *supra*, at 47. In addition, they state claims upon which relief could be granted under Title VII and the ADEA.

Respondent argues that allowing lawsuits based on conclusory allegations of discrimination to go forward will burden the courts and encourage disgruntled employees to bring unsubstantiated suits. Brief for Respondent 34–40. What-

ever the practical merits of this argument, the Federal Rules do not contain a heightened pleading standard for employment discrimination suits. A requirement of greater specificity for particular claims is a result that "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." *Leatherman, supra,* at 168. Furthermore, Rule 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. "Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Scheuer,* 416 U. S., at 236.

For the foregoing reasons, we hold that an employment discrimination plaintiff need not plead a prima facie case of discrimination and that petitioner's complaint is sufficient to survive respondent's motion to dismiss. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

PORTER ET AL. *v.* NUSSLE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 00–853. Argued January 14, 2002—Decided February 26, 2002

Without filing a grievance under applicable Connecticut Department of Correction procedures, plaintiff-respondent Nussle, a state prison inmate, commenced a federal-court action under 42 U. S. C. § 1983, charging that corrections officers, including defendant-petitioner Porter, had subjected him to a sustained pattern of harassment and intimidation and had singled him out for a severe beating in violation of the Eighth Amendment's ban on "cruel and unusual punishments." The District Court dismissed Nussle's suit, relying on a provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U. S. C. § 1997e(a), that directs: "No action shall be brought with respect to prison conditions under section 1983 . . . , or any other Federal law, by a prisoner . . . until such administrative remedies as are available are exhausted." The Second Circuit reversed, holding that exhaustion of administrative remedies is not required for a claim of the kind Nussle asserted. The appeals court concluded that § 1997e(a)'s "prison conditions" phrase covers only conditions affecting prisoners generally, not single incidents that immediately affect only particular prisoners, such as corrections officers' use of excessive force. In support of its position, the court cited legislative history suggesting that the PLRA curtails frivolous suits, not actions seeking relief from corrections officer brutality; the court also referred to pre-PLRA decisions in which this Court distinguished, for proof of injury and *mens rea* purposes, between excessive force claims and conditions of confinement claims.

Held: The PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. Cf. *Wilson* v. *Seiter*, 501 U. S. 294, 299, n. 1. Pp. 523–532.

(a) The current exhaustion provision in § 1997e(a) differs markedly from its predecessor. Once within the district court's discretion, exhaustion in § 1997e(a) cases is now mandatory. See *Booth* v. *Churner*, 532 U. S. 731, 739. And unlike the previous provision, which encompassed only § 1983 suits, exhaustion is now required for all "action[s] . . . brought with respect to prison conditions." Section 1997e(a), designed to reduce the quantity and improve the quality of prisoner suits, affords corrections officials an opportunity to address complaints internally

before allowing the initiation of a federal case. In some instances, corrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation. *Id.*, at 737. In other instances, the internal review might filter out some frivolous claims. *Ibid.* And for cases ultimately brought to court, an administrative record clarifying the controversy's contours could facilitate adjudication. See, *e. g.*, *ibid.* Pp. 523–525.

(b) Determination of the meaning of § 1997e(a)'s "prison conditions" phrase is guided by the PLRA's text and context, and by this Court's prior decisions relating to "[s]uits by prisoners," as § 1997e is titled. The pathmarking opinion is *McCarthy* v. *Bronson*, 500 U. S. 136, in which the Court construed the Federal Magistrates Act's authorization to district judges to refer "prisoner petitions challenging conditions of confinement" to magistrate judges. This Court concluded in *McCarthy* that, read in its proper context, the phrase "challenging conditions of confinement" authorizes the nonconsensual reference of *all* prisoner petitions to a magistrate, *id.*, at 139. The *McCarthy* Court emphasized that *Preiser* v. *Rodriguez*, 411 U. S. 475, had unambiguously placed cases involving single episodes of unconstitutional conduct within the broad category of prisoner petitions challenging conditions of confinement, 500 U. S., at 141; found it telling that Congress, in composing the Magistrates Act, chose language that so clearly paralleled the *Preiser* opinion, 500 U. S., at 142; and considered it significant that the latter Act's purpose—to lighten overworked district judges' caseload—would be thwarted by allowing satellite litigation over the precise contours of an exception for single episode cases, *id.*, at 143. The general presumption that Congress expects its statutes to be read in conformity with this Court's precedents, *United States* v. *Wells*, 519 U. S. 482, 495, and the PLRA's dominant concern to promote administrative redress, filter out groundless claims, and foster better prepared litigation of claims aired in court, see *Booth* v. *Churner*, 532 U. S., at 737, persuade the Court that § 1997e(a)'s key words "prison conditions" are properly read through the lens of *McCarthy* and *Preiser*. Those decisions tug strongly away from classifying suits about prison guards' use of excessive force, one or many times, as anything other than actions "with respect to prison conditions." Nussle misplaces principal reliance on *Hudson* v. *McMillian*, 503 U. S. 1, 8–9, and *Farmer* v. *Brennan*, 511 U. S. 825, 835–836. Although those cases did distinguish excessive force claims from conditions of confinement claims, they did so in the context of proof requirements: what injury must a plaintiff allege and show; what mental state must a plaintiff plead and prove. Proof requirements, once a case is in court, however, do not touch or concern

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the threshold inquiry at issue here: whether resort to a prison grievance process must precede resort to a court. There is no reason to believe that Congress meant to release the evidentiary distinctions drawn in *Hudson* and *Farmer* from their moorings and extend their application to § 1997e(a)'s otherwise invigorated exhaustion requirement. It is at least equally plausible that Congress inserted "prison conditions" into the exhaustion provision simply to make it clear that preincarceration claims fall outside § 1997e(a), for example, a § 1983 claim against the prisoner's arresting officer. Furthermore, the asserted distinction between excessive force claims and exhaustion-mandatory "frivolous" claims is untenable, for excessive force claims can be frivolous, and exhaustion serves purposes beyond weeding out frivolous allegations. Pp. 525–530.

(c) Other infirmities inhere in the Second Circuit's disposition. See *McCarthy*, 500 U. S., at 143. In the prison environment, a specific incident may be symptomatic of a systemic problem, rather than aberrational. *Id.*, at 143–144. Nussle urges that his case could be placed in the isolated episode category, but he might equally urge that his complaint describes a pattern or practice of harassment climaxing in the alleged beating. It seems unlikely that Congress, when it included in the PLRA a firm exhaustion requirement, meant to leave the need to exhaust to the pleader's option. Cf. *Preiser*, 411 U. S., at 489–490. Moreover, the appeals court's disposition augurs complexity; bifurcated proceedings would be normal thereunder when, for example, a prisoner sues both the corrections officer alleged to have used excessive force and the supervisor who allegedly failed adequately to monitor those in his charge. Finally, scant sense supports the single occurrence, prevailing circumstance dichotomy. For example, prison authorities' interest in receiving prompt notice of, and opportunity to take action against, guard brutality is no less compelling than their interest in receiving notice and an opportunity to stop other types of staff wrongdoing. See *id.*, at 492. Pp. 530–531.

224 F. 3d 95, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Richard Blumenthal, Attorney General of Connecticut, argued the cause for petitioners. With him on the briefs were *Gregory T. D'Auria*, *Robert B. Fiske III*, *Perry Zinn-Rowthorn*, *Steven R. Strom*, and *Mark F. Kohler*, Assistant Attorneys General.

John R. Williams argued the cause for respondent. With him on the briefs was *Norman A. Pattis.*

Irving R. Gornstein argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Olson, Acting Assistant Attorney General Schiffer, Deputy Solicitor General Clement, Barbara L. Herwig,* and *Peter R. Maier.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the obligation of prisoners who claim denial of their federal rights while incarcerated to exhaust prison grievance procedures before seeking judicial relief. Plaintiff-respondent Ronald Nussle, an inmate in a Connecticut prison, brought directly to court, without filing an inmate grievance, a complaint charging that corrections officers singled him out for a severe beating, in violation of the Eighth Amendment's ban on "cruel and unusual punishments." Nussle bypassed the grievance procedure despite a provision of the Prison Litigation Reform Act of 1995 (PLRA), 110 Stat. 1321–73, as amended, 42 U. S. C. § 1997e(a)

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*Briefs of *amici curiae* urging reversal were filed for the State of New York et al. by *Eliot Spitzer,* Attorney General of New York, *Preeta D. Bansal,* Solicitor General, and *Caitlin J. Halligan,* First Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Janet Napolitano* of Arizona, *Bill Lockyer* of California, *M. Jane Brady* of Delaware, *Thurbert E. Baker* of Georgia, *Earl I. Anzai* of Hawaii, *James E. Ryan* of Illinois, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *Richard P. Ieyoub* of Louisiana, *J. Joseph Curran, Jr.,* of Maryland, *Thomas F. Reilly* of Massachusetts, *Jennifer M. Granholm* of Michigan, *Jeremiah W. Nixon* of Missouri, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *John J. Farmer, Jr.,* of New Jersey, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Hardy Myers* of Oregon, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *John Cornyn* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, and *Christine O. Gregoire* of Washington; and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley.*

(1994 ed., Supp. V), that directs: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

The Court of Appeals for the Second Circuit held that § 1997e(a) governs only conditions affecting prisoners generally, not single incidents, such as corrections officers' use of excessive force, actions that immediately affect only particular prisoners. Nussle defends the Second Circuit's judgment, but urges that the relevant distinction is between excessive force claims, which, he says, need not be pursued administratively, and all other claims, which, he recognizes, must proceed first through the prison grievance process. We reject both readings and hold, in line with the text and purpose of the PLRA, our precedent in point, and the weight of lower court authority, that § 1997e(a)'s exhaustion requirement applies to all prisoners seeking redress for prison circumstances or occurrences.

I

Respondent Ronald Nussle is an inmate at the Cheshire Correctional Institution in Connecticut. App. 38. According to his complaint, corrections officers at the prison subjected him to "a prolonged and sustained pattern of harassment and intimidation" from the time of his arrival there in May 1996. *Id.*, at 39. Nussle alleged that he was singled out because he was "perceived" to be a friend of the Governor of Connecticut, with whom corrections officers were feuding over labor issues. *Ibid.*

Concerning the episode in suit, Nussle asserted that, on or about June 15, 1996, several officers, including defendant-petitioner Porter, ordered Nussle to leave his cell, "placed him against a wall and struck him with their hands, kneed him in the back, [and] pulled his hair." *Ibid.* Nussle al-

leged that the attack was unprovoked and unjustified, and that the officers told him they would kill him if he reported the beating. *Ibid.*

Then, as now, the Connecticut Department of Correction provided a grievance system for prisoners. See *id.*, at 5–18. Under that system, grievances must be filed within 30 days of the "occurrence." *Id.*, at 11. Rules governing the grievance process include provisions on confidentiality and against reprisals. *Id.*, at 17–18.

Without filing a grievance, on June 10, 1999, Nussle commenced an action in Federal District Court under 42 U. S. C. § 1983; he filed suit days before the three-year statute of limitations ran out on the § 1983 claim.[1] Nussle charged, principally, that the corrections officers' assault violated his right to be free from cruel and unusual punishment under the Eighth Amendment, as made applicable to the States by the Fourteenth Amendment. App. 38. The District Court, relying on § 1997e(a), dismissed Nussle's complaint for failure to exhaust administrative remedies. *Nussle* v. *Willette*, 3:99CV1091(AHN) (D. Conn., Nov. 22, 1999), App. 43.

Construing § 1997e(a) narrowly because it is an exception "to the general rule of non-exhaustion in § 1983 cases," the Court of Appeals for the Second Circuit reversed the District Court's judgment; the appeals court held that "exhaustion of administrative remedies is not required for [prisoner] claims of assault or excessive force brought under § 1983." *Nussle* v. *Willette*, 224 F. 3d 95, 106 (2000). Section 1997e(a) requires administrative exhaustion of inmates' claims "with respect to prison conditions," but contains no definition of the words "prison conditions." The appeals court found

[1] The Second Circuit has held that § 1983 actions in Connecticut are governed by that State's three-year statute of limitations for tort actions. *Williams* v. *Walsh*, 558 F. 2d 667, 670 (1977).

the term "scarcely free of ambiguity." *Id.*, at 101.[2] For purposes of the PLRA's exhaustion requirement, the court concluded, the term was most appropriately read to mean "'circumstances affecting everyone in the area,'" rather than "'single or momentary matter[s],' such as beatings . . . directed at particular individuals." *Ibid.* (quoting *Booth* v. *Churner*, 206 F. 3d 289, 300–301 (CA3 2000) (Noonan, J., concurring and dissenting), aff'd on other grounds, 532 U. S. 731 (2001)).

The Court of Appeals found support for its position in the PLRA's legislative history. Floor statements "overwhelmingly suggest[ed]" that Congress sought to curtail suits qualifying as "frivolous" because of their "subject matter," *e. g.*, suits over "insufficient storage locker space," "a defective haircut," or "being served chunky peanut butter instead of the creamy variety." 224 F. 3d, at 105 (internal quotation marks omitted). Actions seeking relief from corrections officer brutality, the Second Circuit stressed, are not of that genre. Further, the Court of Appeals referred to pre-PLRA decisions in which this Court had "disaggregate[d] the broad category of Eighth Amendment claims so

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[2] Another provision of the PLRA, 18 U. S. C. § 3626(g)(2) (1994 ed., Supp. V), the court observed, does define "prison conditions." *Nussle* v. *Willette*, 224 F. 3d 95, 101 (CA2 2000). That provision, which concerns prospective relief, defines "prison conditions" to mean "the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." The Second Circuit found the § 3626(g)(2) definition "no less ambiguous" than the bare text of § 1997e(a). Neither of the alternative § 3626(g)(2) formulations, the court said, would be used in "everyday" speech to describe "particular instances of assault or excessive force." *Id.*, at 102. But see *Booth* v. *Churner*, 206 F. 3d 289, 294–295 (CA3 2000), aff'd on other grounds, 532 U. S. 731 (2001) (reading § 3626(g)(2) to cover all prison conditions and corrections officer actions that "make [prisoners'] lives worse"). The Second Circuit ultimately concluded that it would be improper, in any event, automatically to import § 3626(g)(2)'s "definition of 'civil actions brought with respect to prison conditions' into 42 U. S. C. § 1997e(a)" because the two provisions had "distinct statutory purposes." 224 F. 3d, at 105.

as to distinguish [for proof of injury and *mens rea* purposes] between 'excessive force' claims, on the one hand, and 'conditions of confinement' claims, on the other." *Id.*, at 106 (citing *Hudson* v. *McMillian*, 503 U. S. 1 (1992), and *Farmer* v. *Brennan*, 511 U. S. 825 (1994)).

In conflict with the Second Circuit, other Federal Courts of Appeals have determined that prisoners alleging assaults by prison guards must meet § 1997e(a)'s exhaustion requirement before commencing a civil rights action. See *Smith* v. *Zachary*, 255 F. 3d 446 (CA7 2001); *Higginbottom* v. *Carter*, 223 F. 3d 1259 (CA11 2000); *Booth* v. *Churner*, 206 F. 3d 289 (CA3 2000); *Freeman* v. *Francis*, 196 F. 3d 641 (CA6 1999). We granted certiorari to resolve the intercircuit conflict, 532 U. S. 1065 (2001), and now reverse the Second Circuit's judgment.

II

Ordinarily, plaintiffs pursuing civil rights claims under 42 U. S. C. § 1983 need not exhaust administrative remedies before filing suit in court. See *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 516 (1982). Prisoner suits alleging constitutional deprivations while incarcerated once fell within this general rule. See *Wilwording* v. *Swenson*, 404 U. S. 249, 251 (1971) *(per curiam)*.

In 1980, however, Congress introduced an exhaustion prescription for suits initiated by state prisoners. See Civil Rights of Institutionalized Persons Act, 94 Stat. 352, as amended, 42 U. S. C. § 1997e (1994 ed.). This measure authorized district courts to stay a state prisoner's § 1983 action "for a period of not to exceed 180 days" while the prisoner exhausted available "plain, speedy, and effective administrative remedies." § 1997e(a)(1). Exhaustion under the 1980 prescription was in large part discretionary; it could be ordered only if the State's prison grievance system met specified federal standards, and even then, only if, in the particular case, the court believed the requirement "appropriate and in the interests of justice." §§ 1997e(a) and (b). We de-

scribed this provision as a "limited exhaustion requirement" in *McCarthy* v. *Madigan*, 503 U. S. 140, 150–151 (1992), and thought it inapplicable to prisoner suits for damages when monetary relief was unavailable through the prison grievance system.

In 1996, as part of the PLRA, Congress invigorated the exhaustion prescription. The revised exhaustion provision, titled "Suits by prisoners," states: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U. S. C. § 1997e(a) (1994 ed., Supp. V).

The current exhaustion provision differs markedly from its predecessor. Once within the discretion of the district court, exhaustion in cases covered by § 1997e(a) is now mandatory. See *Booth* v. *Churner*, 532 U. S. 731, 739 (2001). All "available" remedies must now be exhausted; those remedies need not meet federal standards, nor must they be "plain, speedy, and effective." See *ibid.;* see also *id.*, at 740, n. 5. Even when the prisoner seeks relief not available in grievance proceedings, notably money damages, exhaustion is a prerequisite to suit. See *id.*, at 741. And unlike the previous provision, which encompassed only § 1983 suits, exhaustion is now required for all "action[s] . . . brought with respect to prison conditions," whether under § 1983 or "any other Federal law." Compare 42 U. S. C. § 1997e (1994 ed.) with 42 U. S. C. § 1997e(a) (1994 ed., Supp. V). Thus federal prisoners suing under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), must first exhaust inmate grievance procedures just as state prisoners must exhaust administrative processes prior to instituting a § 1983 suit.

Beyond doubt, Congress enacted § 1997e(a) to reduce the quantity and improve the quality of prisoner suits; to this

purpose, Congress afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case. In some instances, corrective action taken in response to an inmate's grievance might improve prison administration and satisfy the inmate, thereby obviating the need for litigation. *Booth*, 532 U. S., at 737. In other instances, the internal review might "filter out some frivolous claims." *Ibid.* And for cases ultimately brought to court, adjudication could be facilitated by an administrative record that clarifies the contours of the controversy. See *ibid.*; see also *Madigan*, 503 U. S., at 146.

Congress described the cases covered by § 1997e(a)'s exhaustion requirement as "action[s] . . . brought with respect to prison conditions." Nussle's case requires us to determine what the § 1997e(a) term "prison conditions" means, given Congress' failure to define the term in the text of the exhaustion provision.[3] We are guided in this endeavor by the PLRA's text and context, and by our prior decisions relating to "[s]uits by prisoners," § 1997e.[4]

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[3] The parties dispute the meaning of a simultaneously enacted provision, § 3626(g)(2), which concerns prospective relief, and for that purpose, defines the expression "civil action with respect to prison conditions." See *supra*, at 522, n. 2 (noting, *inter alia*, divergent constructions of Second and Third Circuits). We rest our decision on the meaning of "prison conditions" in the context of § 1997e, and express no definitive opinion on the proper reading of § 3626(g)(2).

[4] In reaching its decision, the Second Circuit referred to its "obligation to construe statutory exceptions narrowly, in order to give full effect to the general rule of non-exhaustion in § 1983." 224 F. 3d, at 106 (citing *City of Edmonds* v. *Oxford House, Inc.*, 514 U. S. 725, 731–732 (1995), and *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 508 (1982)). The Second Circuit did not then have available to it our subsequently rendered decision in *Booth* v. *Churner*, 532 U. S. 731 (2001). *Booth* held that § 1997e(a) mandates initial recourse to the prison grievance process even when a prisoner seeks only money damages, a remedy not available in that process. See *id.*, at 741. In so ruling, we observed that "Congress . . . may well have thought we were shortsighted" in failing adequately to

As to precedent, the pathmarking opinion is *McCarthy* v. *Bronson*, 500 U. S. 136 (1991), which construed 28 U. S. C. § 636(b)(1)(B) (1988 ed.), a Judicial Code provision authorizing district judges to refer to magistrate judges, *inter alia*, "prisoner petitions challenging conditions of confinement."[5] The petitioning prisoner in *McCarthy* argued that § 636(b)(1)(B) allowed nonconsensual referrals "only when a prisoner challenges ongoing prison conditions." 500 U. S., at 138. The complaint in *McCarthy* targeted no "ongoing prison conditions"; it homed in on "an isolated incident" of excessive force. *Ibid.* For that reason, according to the *McCarthy* petitioner, nonconsensual referral of his case was impermissible. *Id.*, at 138–139.

We did not "quarrel with" the prisoner's assertion in *McCarthy* that "the most natural reading of the phrase 'challenging conditions of confinement,' when viewed in isolation, would not include suits seeking relief from isolated episodes of unconstitutional conduct." *Id.*, at 139. We nonetheless concluded that the petitioner's argument failed upon reading the phrase "in its proper context." *Ibid.* We found no suggestion in § 636(b)(1)(B) that Congress meant to divide

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recognize the utility of the administrative process to satisfy, reduce, or clarify prisoner grievances. *Id.*, at 737. While the canon on which the Second Circuit relied may be dependable in other contexts, the PLRA establishes a different regime. For litigation within § 1997e(a)'s compass, Congress has replaced the "general rule of non-exhaustion" with a general rule of exhaustion.

[5] Title 28 U. S. C. § 636(b)(1)(B) provides in relevant part:

"(b)(1) Notwithstanding any provision of law to the contrary—

. . . . . .

"a judge may . . . designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, . . . of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement."

prisoner petitions "into subcategories." *Ibid.* "On the contrary," we observed, "when the relevant section is read in its entirety, it suggests that Congress intended to authorize the nonconsensual reference of *all* prisoner petitions to a magistrate." *Ibid.* The Federal Magistrates Act, we noted, covers actions of two kinds: challenges to "conditions of confinement"; and "applications for habeas corpus relief." *Id.*, at 140. Congress, we concluded, "intended to include in their entirety th[ose] two primary categories of suits brought by prisoners." *Ibid.*

"Just three years before [§ 636(b)(1)(B)] was drafted," we explained in *McCarthy*, "our opinion in *Preiser* v. *Rodriguez*, 411 U. S. 475 (1973), had described [the] two broad categories of prisoner petitions: (1) those challenging the fact or duration of confinement itself; and (2) those challenging the conditions of confinement." *Ibid.* *Preiser* v. *Rodriguez*, 411 U. S. 475 (1973), left no doubt, we further stated in *McCarthy*, that "the latter category unambiguously embraced the kind of single episode cases that petitioner's construction would exclude." 500 U. S., at 141. We found it telling that Congress, in composing the Magistrates Act, chose language "that so clearly parallel[ed] our *Preiser* opinion." *Id.*, at 142. We considered it significant as well that the purpose of the Magistrates Act—to lighten the caseload of overworked district judges—would be thwarted by opening the door to satellite litigation over "the precise contours of [the] suggested exception for single episode cases." *Id.*, at 143.

As in *McCarthy*, we here read the term "prison conditions" not in isolation, but "in its proper context." *Id.*, at 139. The PLRA exhaustion provision is captioned "Suits by prisoners," see § 1997e; this unqualified heading scarcely aids the argument that Congress meant to bisect the universe of prisoner suits. See *ibid.*; see also *Almendarez-Torres* v. *United States*, 523 U. S. 224, 234 (1998) ("[T]he title

of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (internal quotation marks omitted)).

This Court generally "presume[s] that Congress expects its statutes to be read in conformity with th[e] Court's precedents." *United States* v. *Wells*, 519 U. S. 482, 495 (1997). That presumption, and the PLRA's dominant concern to promote administrative redress, filter out groundless claims, and foster better prepared litigation of claims aired in court, see *Booth*, 532 U. S., at 737, persuade us that § 1997e(a)'s key words "prison conditions" are properly read through the lens of *McCarthy* and *Preiser*. Those decisions tug strongly away from classifying suits about prison guards' use of excessive force, one or many times, as anything other than actions "with respect to prison conditions."

Nussle places principal reliance on *Hudson* v. *McMillian*, 503 U. S. 1 (1992), and *Farmer* v. *Brennan*, 511 U. S. 825, 835–836 (1994), and the Second Circuit found support for its position in those cases as well, 224 F. 3d, at 106. *Hudson* held that to sustain a claim of excessive force, a prisoner need not show significant injury. 503 U. S., at 9. In so ruling, the Court did indeed distinguish excessive force claims from "conditions of confinement" claims; to sustain a claim of the latter kind "significant injury" must be shown. *Id.*, at 8–9. *Hudson* also observed that a "conditions of confinement" claim may succeed if a prisoner demonstrates that prison officials acted with "deliberate indifference," *id.*, at 8 (citing *Wilson* v. *Seiter*, 501 U. S. 294, 298 (1991)), while a prisoner alleging excessive force must demonstrate that the defendant acted "maliciously and sadistically to cause harm," *Hudson*, 503 U. S., at 7. *Farmer* similarly distinguished the mental state that must be shown to prevail on an excessive force claim, *i. e.*, "purposeful or knowing conduct," from the lesser *mens rea* requirement governing "conditions of confinement" claims, *i. e.*, "deliberate indifference." 511 U. S., at 835–836. We do not question those decisions

and attendant distinctions in the context in which they were made. But the question presented here is of a different order.

Hudson and *Farmer* trained solely and precisely on proof requirements: what injury must a plaintiff allege and show; what mental state must a plaintiff plead and prove. Proof requirements once a case is in court, however, do not touch or concern the threshold inquiry before us: whether resort to a prison grievance process must precede resort to a court. We have no reason to believe that Congress meant to release the evidentiary distinctions drawn in *Hudson* and *Farmer* from their moorings and extend their application to the otherwise invigorated exhaustion requirement of § 1997e(a). Such an extension would be highly anomalous given Congress' elimination of judicial discretion to dispense with exhaustion and its deletion of the former constraint that administrative remedies must be "plain, speedy, and effective" before exhaustion could be required. See *supra*, at 524; *Booth*, 532 U. S., at 739; cf. *id.*, at 740–741 ("Congress's imposition of an obviously broader exhaustion requirement makes it highly implausible that it meant to give prisoners a strong inducement to skip the administrative process simply by limiting prayers for relief to money damages not offered through administrative grievance mechanisms.").

Nussle contends that Congress added the words "prison conditions" to the text of § 1997e(a) specifically to exempt excessive force claims from the now mandatory exhaustion requirement; he sees that requirement as applicable mainly to " 'prison conditions' claims that may be frivolous as to subject matter," 224 F. 3d, at 106. See Brief for Respondent 2, 26–27. It is at least equally plausible, however, that Congress inserted "prison conditions" into the exhaustion provision simply to make it clear that preincarceration claims fall outside § 1997e(a), for example, a Title VII claim against the prisoner's preincarceration employer, or, for that matter, a § 1983 claim against his arresting officer.

Furthermore, the asserted distinction between excessive force claims that need not be exhausted, on the one hand, and exhaustion-mandatory "frivolous" claims on the other, see *id.*, at 2, 26–27, is untenable, for "[e]xcessive force claims can be frivolous," *Smith*, 255 F. 3d, at 452 ("Inmates can allege they were subject to vicious nudges."), and exhaustion serves purposes beyond weeding out frivolous allegations, see *supra*, at 524–525.

Other infirmities inhere in the Second Circuit's disposition. See *McCarthy*, 500 U. S., at 143 ("Petitioner's definition would generate additional work for the district courts because the distinction between cases challenging ongoing conditions and those challenging specific acts of alleged misconduct will often be difficult to identify."). As *McCarthy* emphasized, in the prison environment a specific incident may be symptomatic rather than aberrational. *Id.*, at 143–144. An unwarranted assault by a corrections officer may be reflective of a systemic problem traceable to poor hiring practices, inadequate training, or insufficient supervision. See *Smith*, 255 F. 3d, at 449. Nussle himself alleged in this very case not only the beating he suffered on June 15, 1996; he also alleged, extending before and after that date, "a prolonged and sustained pattern of harassment and intimidation by corrections officers." App. 39. Nussle urges that his case could be placed in the isolated episode category, but he might equally urge that his complaint describes a pattern or practice of harassment climaxing in the alleged beating. It seems unlikely that Congress, when it included in the PLRA a firm exhaustion requirement, meant to leave the need to exhaust to the pleader's option. Cf. *Preiser*, 411 U. S., at 489–490 ("It would wholly frustrate explicit congressional intent to hold that [prisoners] could evade this [exhaustion] requirement by the simple expedient of putting a different label on their pleadings.").

Under Nussle's view and that of the Second Circuit, moreover, bifurcation would be normal when a prisoner sues both

a corrections officer alleged to have used excessive force and the supervisor who allegedly failed adequately to monitor those in his charge. Tr. of Oral Arg. 31. The officer alone could be taken directly to court; the charge against the supervisor would proceed first through the internal grievance process. Similarly split proceedings apparently would be in order, under the Second Circuit's decision, when the prisoner elects to pursue against the same officers both discrete instance and ongoing conduct charges.

Finally, we emphasize a concern over and above the complexity augured by the Second Circuit's disposition: Scant sense supports the single occurrence, prevailing circumstance dichotomy. Why should a prisoner have immediate access to court when a guard assaults him on one occasion, but not when beatings are widespread or routine? See *Smith*, 255 F. 3d, at 450. Nussle's distinction between excessive force claims and all other prisoner suits, see *supra*, at 520, presents a similar anomaly. Do prison authorities have an interest in receiving prompt notice of, and opportunity to take action against, guard brutality that is somehow less compelling than their interest in receiving notice and an opportunity to stop other types of staff wrongdoing? See *Preiser*, 411 U. S., at 492 ("Since [the] internal problems of state prisons involve issues so peculiarly within state authority and expertise, the States have an important interest in not being bypassed in the correction of those problems.").[6]

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[6] Other provisions of § 1997e that refer to "prison conditions" would have less scope under the Second Circuit's construction of the term. Section 1997e(c)(1) provides for dismissal on the court's own initiative of "any action brought with respect to prison conditions" that is "frivolous [or] malicious." No specific incident complaint would be subject to that prescription under the view that such suits do not implicate "prison conditions." Further, § 1997e(f)(1) provides that pretrial proceedings in "any action brought with respect to prison conditions" may be held at the prison via telephone, video conference, or other telecommunications technology so that the prisoner need not be physically transferred to participate. Surely such arrangements would be appropriate in Nussle's case and

* * *

For the reasons stated, we hold that the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong. Cf. *Wilson*, 501 U. S., at 299, n. 1. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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others of its genre. But on what authority would these practical procedures rest if cases like Nussle's do not qualify as actions regarding "prison conditions"?

Syllabus

RAYGOR ET AL. *v.* REGENTS OF THE UNIVERSITY OF MINNESOTA ET AL.

CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 00–1514. Argued November 26, 2001—Decided February 27, 2002

Petitioners each filed complaints in Federal District Court against respondent university (hereinafter respondent), an arm of the State of Minnesota, alleging a federal cause of action under the Age Discrimination in Employment Act (ADEA) and a state law discrimination action under the federal supplemental jurisdiction statute, 28 U. S. C. § 1367, which purports to toll the limitations period for supplemental claims while they are pending in federal court and for 30 days after they are dismissed, § 1367(d). Respondent's answers included the affirmative defense that the suits were barred by the State's Eleventh Amendment immunity. The District Court subsequently dismissed the claims, and petitioners withdrew their federal appeal after this Court held that the ADEA does not abrogate the States' sovereign immunity, see *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62, 92. In the meantime, petitioners had refiled their state law claims in state court. Respondent contended that the claims were barred by the applicable state statute of limitations and that the federal supplemental jurisdiction statute did not toll the limitations period on those claims because the Federal District Court never had subject matter jurisdiction over the ADEA claims. Agreeing, the State District Court dismissed the suit, but the Minnesota Appeals Court reversed. Reversing, in turn, the State Supreme Court held § 1367(d) unconstitutional when applied to claims against nonconsenting state defendants, such as respondent.

Held: Section 1367(d) does not toll the limitations period for state law claims asserted against nonconsenting state defendants that are dismissed on Eleventh Amendment grounds. Pp. 539–548.

(a) Petitioners sought to have their state law claims heard in federal court as supplemental claims under § 1367(a). That grant of jurisdiction does not extend to claims against nonconsenting state defendants, see *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, but the question remains whether § 1367(d) tolls the limitations period for state law claims asserted under § 1367(a) but subsequently dismissed on Eleventh Amendment grounds. Pp. 539–542.

(b) Because § 1367(d), on its face, purports to apply to dismissals of "any claim asserted under subsection (a)," it could be broadly read to apply to any such claim regardless of the reason for dismissal. But

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reading subsection (d) to apply when state law claims are dismissed on Eleventh Amendment grounds raises serious doubts about the provision's constitutionality given state sovereign immunity principles. Such a reading would require a State to defend against a claim in state court that had never been filed in that court until some indeterminate time after the original limitations period had elapsed. There is a rebuttable presumption that equitable tolling under federal law applies to waivers of the United States' immunity. However, this Court has never held that waivers of a State's immunity presumptively include federal tolling rules, nor is it obvious that such a presumption would be a realistic assessment of legislative intent. Moreover, a state sovereign prescribes the terms and conditions on which it consents to be sued in its own courts, *Beers* v. *Arkansas*, 20 How. 527, 529, and only the sovereign's consent can qualify the absolute character of its immunity from suit in those courts, *Nevada* v. *Hall*, 440 U. S. 410, 414. The notion that federal tolling of a state limitations period constitutes an abrogation of state sovereign immunity as to claims against state defendants at least raises a serious constitutional doubt. Thus, this Court has good reason to rely on the statutory construction principle that Congress must make its intention to alter the constitutional balance between the States and the Federal Government unmistakably clear in the statute's language, *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65. Section 1367(d)'s lack of clarity is apparent in two respects. With respect to the *claims* covered, § 1367(d) reflects no specific or unequivocal intent to toll the limitations period for claims asserted against nonconsenting States, especially considering that such claims do not fall within § 1367(a)'s scope. With respect to the *dismissals* covered, § 1367(d) occurs in the context of a statute that specifically contemplates only a few grounds for dismissal, none based on the Eleventh Amendment. Section 1367(d) may not clearly exclude tolling for claims against nonconsenting States dismissed on Eleventh Amendment grounds, but this Court is looking for a clear statement of what the rule includes, not what it excludes. Pp. 542–546.

(c) Petitioners argue that the tolling provision should be interpreted to apply to their claims because it was enacted to prevent due process violations caused by state claim preclusion and anti-claim-splitting laws. However, since it is far from clear whether Congress intended tolling to apply when claims against nonconsenting States were dismissed on Eleventh Amendment grounds, it is not relevant whether Congress acted pursuant to § 5 of the Fourteenth Amendment. And there is no merit to petitioners' claim that respondent consented to suit in federal court, since it raised its Eleventh Amendment defense at the earliest

opportunity by including that defense in its answers to the complaints. Pp. 546–547.

620 N. W. 2d 680, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 548. STEVENS, J., filed a dissenting opinion, in which SOUTER and BREYER, JJ., joined, *post*, p. 549.

Howard L. Bolter argued the cause for petitioners. With him on the briefs was *Eric Schnapper*.

Mark B. Rotenberg argued the cause for respondent. With him on the brief were *Lorie S. Gildea* and *Tracy M. Smith*.

Deputy Solicitor General Clement argued the cause for intervenor United States. With him on the brief were *Solicitor General Olson*, *Assistant Attorney General McCallum*, *Barbara McDowell*, *Mark B. Stern*, and *Alisa B. Klein*.*

JUSTICE O'CONNOR delivered the opinion of the Court.

In federal court, petitioners asserted state law claims under the supplemental jurisdiction statute, 28 U. S. C.

*Briefs of *amici curiae* urging affirmance were filed for the State of Maryland et al. by *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Andrew Baida*, Solicitor General, *Robert H. Kono*, Acting Attorney General of Guam, and *Dan Schweitzer*, and by the Attorneys General for their respective States as follows: *Bruce M. Botelho* of Alaska, *Ken Salazar* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert A. Butterworth* of Florida, *Earl I. Anzai* of Hawaii, *Steve Carter* of Indiana, *Thomas J. Miller* of Iowa, *Richard P. Ieyoub* of Louisiana, *Thomas F. Reilly* of Massachusetts, *Mike Moore* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Wayne Stenehjem* of North Dakota, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *D. Michael Fisher* of Pennsylvania, *Charles M. Condon* of South Carolina, *John Cornyn* of Texas, *Mark L. Shurtleff* of Utah, *William H. Sorrell* of Vermont, and *Randolph Beales* of Virginia; and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley*.

§ 1367 (1994 ed.), against respondent university, an arm of the State of Minnesota. Those claims were dismissed on Eleventh Amendment grounds, and petitioners refiled them in state court past the period of limitations. The supplemental jurisdiction statute purports to toll the period of limitations for supplemental claims while they are pending in federal court and for 30 days after they are dismissed. § 1367(d). The Minnesota Supreme Court held that provision unconstitutional when applied to claims against nonconsenting state defendants, such as respondent university, and dismissed petitioners' claims. We affirm the judgment on the alternative ground that the tolling provision does not apply to claims filed in federal court against nonconsenting States.

I

In August 1995, petitioners Lance Raygor and James Goodchild filed charges with the Equal Employment Opportunity Commission (EEOC). The charges alleged that their employer, the University of Minnesota, discriminated against them on the basis of age in December 1994 by attempting to compel them to accept early retirement at the age of 52. After petitioners refused to retire, the university allegedly reclassified petitioners' jobs so as to reduce their salaries. App. to Pet. for Cert. A–45; Brief for Petitioners 3.

The EEOC cross-filed petitioners' charges with the Minnesota Department of Human Rights (MDHR) and later issued a right-to-sue letter on June 6, 1996, advising that petitioners could file a lawsuit within 90 days under the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.* (1994 ed. and Supp. V). Brief for United States 5. The MDHR likewise issued right-to-sue letters on July 17, 1996, advising petitioners that they could file suit within 45 days under the Minnesota Human Rights Act (MHRA), Minn. Stat., ch. 363 (1991). 620 N. W. 2d 680, 681 (Minn. 2001); App. to Pet. for Cert. A–46 to A–47.

On or about August 29, 1996, each petitioner filed a separate complaint against respondent Board of Regents of the University of Minnesota (hereinafter respondent), in the United States District Court for the District of Minnesota. 620 N. W. 2d, at 681; App. to Pet. for Cert. A–41. Each complaint alleged a federal cause of action under the ADEA and a state cause of action under the MHRA. The suits were subsequently consolidated. 604 N. W. 2d 128, 130 (Minn. App. 2000). Respondent filed answers to these complaints in September 1996, setting forth eight affirmative defenses, including that the suits were "'barred in whole or in part by Defendant's Eleventh Amendment immunity.'" Brief for Petitioners 4. The District Court entered a scheduling plan that the parties agreed upon. According to the plan, discovery would finish by May 30, 1997, and dispositive motions would be filed by July 15, 1997. *Ibid.* The parties then engaged in discovery as well as mediation. *Ibid.*

In early July 1997, respondent filed its motion to dismiss petitioners' claims pursuant to Federal Rule of Civil Procedure 12(b)(1). Brief for Petitioners 5, n. 5. The motion argued that the federal and state law claims were barred by the Eleventh Amendment. Brief for Respondent Regents of the University of Minnesota 5. Petitioners' response acknowledged respondent's "'potential Eleventh Amendment immunity from state discrimination claims in Federal Court,'" but urged the District Court to exercise supplemental jurisdiction over the state claims if the federal claims were upheld. Brief for Petitioners 5–6. On July 11, 1997, the District Court granted respondent's Rule 12(b)(1) motion and dismissed all of petitioners' claims. App. to Pet. for Cert. A–39. Petitioners appealed, but the appeal was stayed pending this Court's decision in *Kimel* v. *Florida Bd. of Regents*, 528 U. S. 62 (2000). 620 N. W. 2d, at 682. *Kimel* held that the "ADEA does not validly abrogate the States' sovereign immunity." 528 U. S., at 92. Given that result, petitioners moved to withdraw their appeal, and it

was dismissed in January 2000. 620 N. W. 2d, at 682; Brief for Petitioners 6–7.

In the meantime, approximately three weeks after the Federal District Court had dismissed their state law claims, petitioners refiled their state law claims in Hennepin County District Court. 620 N. W. 2d, at 682. Respondent's answer asserted that "'plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.'" Brief for Petitioners 7. The state court initially stayed the lawsuit because of the pending federal appeal, but lifted the stay in December 1998 for the purpose of allowing respondent to move for dismissal on statute of limitations grounds. 620 N. W. 2d, at 682. Respondent moved for summary judgment in February 1999, arguing that petitioners' state claims were barred by the applicable 45 day statute of limitations. See Minn. Stat. §§ 363.06, subd. 3, 363.14, subd. 1(a)(1) (2000). Respondent also argued that the tolling provision of the federal supplemental jurisdiction statute, 28 U. S. C. § 1367, did not apply to toll the limitations period on the state law claims while they were pending in federal court because the Federal District Court never had subject matter jurisdiction over petitioners' ADEA claims. Petitioners argued that the tolling provision of the supplemental jurisdiction statute applied because their state law claims had been dismissed without prejudice. App. to Brief for Petitioners B–3, B–4. The State District Court treated respondent's motion for summary judgment as a motion to dismiss and granted it, holding that § 1367(d) did "not apply . . . because the federal district court never had 'original jurisdiction' over the controversy" since "both the state and federal claims were dismissed for lack of subject matter jurisdiction." *Id.*, at B–5, B–6.

The Minnesota Court of Appeals reversed. The court first decided that the Federal District Court had original jurisdiction over the case before respondent's Eleventh Amendment defense was "successfully asserted." 604 N. W.

2d, at 132 (citing *Wisconsin Dept. of Corrections* v. *Schacht*, 524 U. S. 381 (1998)). The court then held that § 1367(d) applied to toll the statute of limitations for petitioners' state law claims because that provision "allows tolling of any claim dismissed by a federal district court, whether dismissed on Eleventh Amendment grounds or at the discretion of the federal district court under [§ 1367](c)." 604 N. W. 2d, at 132–133.

The Minnesota Supreme Court reversed. The court noted that respondent was an arm of the State, and found that the federal tolling provision facially applied to petitioners' state law claims. 620 N. W. 2d, at 684, 687. The court concluded, however, "that application of section 1367(d) to toll the statute of limitations applicable to state law claims against an unconsenting state defendant first filed in federal court but then dismissed and brought in state court is an impermissible denigration of [respondent's] Eleventh Amendment immunity." *Id.*, at 687. The court thus concluded that § 1367(d) could not constitutionally apply to toll the statute of limitations for petitioners' state law claims, and it dismissed those claims. We granted certiorari, 532 U. S. 1065 (2001), on the question whether 28 U. S. C. § 1367(d) is unconstitutional as applied to a state defendant.

II

In *Mine Workers* v. *Gibbs*, 383 U. S. 715 (1966), this Court held that federal courts deciding claims within their federal-question subject matter jurisdiction, 28 U. S. C. § 1331, may decide state law claims not within their subject matter jurisdiction if the federal and state law claims "derive from a common nucleus of operative fact" and comprise "but one constitutional 'case.'" *Mine Workers, supra*, at 725. Jurisdiction over state law claims in such instances was known as "pendent jurisdiction." This Court later made clear that, absent authorization from Congress, a district court could not exercise pendent jurisdiction over claims involving par-

ties who were not already parties to a claim independently within the court's subject matter jurisdiction. See *Finley* v. *United States*, 490 U. S. 545 (1989).

In the wake of *Finley*, the Federal Courts Study Committee recommended that "Congress expressly authorize federal courts to hear any claim arising out of the same 'transaction or occurrence' as a claim within federal jurisdiction, including claims, within federal question jurisdiction, that require the joinder of additional parties." Report of Federal Courts Study Committee 47 (Apr. 2, 1990). Soon thereafter, Congress enacted the supplemental jurisdiction statute, 28 U. S. C. § 1367, as part of the Judicial Improvements Act of 1990. Subsection (a) of § 1367 states that

> "[e]xcept as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

Subsection (b) places limits on supplemental jurisdiction when the district court's original jurisdiction is based only on diversity of citizenship jurisdiction under 28 U. S. C. § 1332 (1994 ed. and Supp. V). Subsection (c) allows district courts to decline to exercise supplemental jurisdiction in certain situations, such as when a "claim raises a novel or complex issue of State law." § 1367(c)(1) (1994 ed.).

Petitioners originally sought to have their state law claims heard in federal court as supplemental claims falling under § 1367(a). App. to Brief for Petitioners B–3. Prior to the enactment of § 1367, however, this Court held that the Eleventh Amendment bars the adjudication of pendent state law

claims against nonconsenting state defendants in federal court. See *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89, 120 (1984). In that context, the Eleventh Amendment was found to be an "explicit limitation on federal jurisdiction." *Id.*, at 118. Consequently, an express grant of jurisdiction over such claims would be an abrogation of the sovereign immunity guaranteed by the Eleventh Amendment. Before Congress could attempt to do that, it must make its intention to abrogate "'unmistakably clear in the language of the statute.'" *Dellmuth* v. *Muth*, 491 U. S. 223, 228 (1989) (quoting *Atascadero State Hospital* v. *Scanlon*, 473 U. S. 234, 242 (1985)).

The most that can be said about subsection (a), however, is that it is a general grant of jurisdiction, no more specific to claims against nonconsenting States than the one at issue in *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775 (1991). There, we considered whether 28 U. S. C. § 1362 contained a clear statement of an intent to abrogate state sovereign immunity. That grant of jurisdiction provides that

> "[t]he district courts shall have original jurisdiction of *all civil actions*, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." (Emphasis added.)

Such a facially broad grant of jurisdiction over "all civil actions" could be read to include claims by Indian tribes against nonconsenting States, but we held that such language was insufficient to constitute a clear statement of an intent to abrogate state sovereign immunity. *Blatchford*, *supra*, at 786. Likewise, we cannot read § 1367(a) to authorize district courts to exercise jurisdiction over claims against nonconsenting States, even though nothing in the statute expressly excludes such claims. Thus, consistent with *Blatch-*

ford, we hold that § 1367(a)'s grant of jurisdiction does not extend to claims against nonconsenting state defendants.

Even so, there remains the question whether § 1367(d) tolls the statute of limitations for claims against nonconsenting States that are asserted under § 1367(a) but subsequently dismissed on Eleventh Amendment grounds. Subsection (d) of § 1367 provides that

> "[t]he period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

On its face, subsection (d) purports to apply to dismissals of "*any* claim asserted under subsection (a)." *Ibid.* (emphasis added). Thus, it could be broadly read to apply to any claim technically "asserted" under subsection (a) as long as it was later dismissed, regardless of the reason for dismissal. But reading subsection (d) to apply when state law claims against nonconsenting States are dismissed on Eleventh Amendment grounds raises serious doubts about the constitutionality of the provision given principles of state sovereign immunity. If subsection (d) applied in such circumstances, it would toll the state statute of limitations for 30 days in addition to however long the claim had been pending in federal court. This would require a State to defend against a claim in state court that had never been filed in state court until some indeterminate time after the original limitations period had elapsed.

When the sovereign at issue is the United States, we have recognized that a limitations period may be "a central condition" of the sovereign's waiver of immunity. *United States* v. *Mottaz,* 476 U. S. 834, 843 (1986); see also *Block* v. *North Dakota ex rel. Board of Univ. and School Lands,* 461 U. S. 273, 287 (1983) ("When waiver legislation contains a statute

of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity"). In suits against the United States, however, there is a rebuttable presumption that equitable tolling under federal law applies to waivers of the United States' immunity. See *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95 (1990). From this, the dissent argues that any broadening of a State's waiver of immunity through tolling under § 1367(d) presumptively does not violate the State's sovereign immunity. *Post*, at 552–553, and n. 11 (opinion of STEVENS, J.). But this Court has never held that waivers of a State's immunity presumptively include all federal tolling rules, nor is it obvious that such a presumption would be "a realistic assessment of legislative intent." *Irwin*, *supra*, at 95.

Moreover, with respect to suits against a state sovereign in its own courts, we have explained that a State "may prescribe the terms and conditions on which it consents to be sued," *Beers* v. *Arkansas*, 20 How. 527, 529 (1858), and that "[o]nly the sovereign's own consent could qualify the absolute character of [its] immunity" from suit in its own courts, *Nevada* v. *Hall*, 440 U. S. 410, 414 (1979). Thus, although we have not directly addressed whether federal tolling of a state statute of limitations constitutes an abrogation of state sovereign immunity with respect to claims against state defendants, we can say that the notion at least raises a serious constitutional doubt.

Consequently, we have good reason to rely on a clear statement principle of statutory construction. When "Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65 (1989) (quoting *Atascadero*, *supra*, at 242). This principle applies when Congress "intends to pre-empt the historic powers of the States" or when it legislates in "'traditionally sensitive areas'" that "'affec[t] the federal balance.'"

Will, *supra*, at 65 (quoting *United States* v. *Bass*, 404 U. S. 336, 349 (1971)). In such cases, the clear statement principle reflects "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory* v. *Ashcroft*, 501 U. S. 452, 461, 464 (1991).

Here, allowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity. Thus, applying the clear statement principle helps "'assur[e] that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.'" *Will*, *supra*, at 65 (quoting *Bass*, *supra*, at 349). This is obviously important when the underlying issue raises a serious constitutional doubt or problem. See *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 787 (2000) (relying in part on clear statement principle to decide the False Claims Act, 31 U. S. C. §§ 3729–3733 (1994 ed.), did not authorize "an action in federal court by a *qui tam* relator against a State" and avoiding whether such a suit would violate the Eleventh Amendment, an issue raising a serious constitutional doubt); *Gregory*, *supra*, at 464 (relying on clear statement principle to determine that state judges were excluded from the ADEA in order to "avoid a potential constitutional problem" given the constraints on the Court's "ability to consider the limits that the state-federal balance places on Congress' powers under the Commerce Clause").

The question then is whether § 1367(d) states a clear intent to toll the limitations period for claims against nonconsenting States that are dismissed on Eleventh Amendment grounds. Here the lack of clarity is apparent in two respects. With respect to the *claims* the tolling provision covers, one could read § 1367(d) to cover any claim "asserted" under subsec-

tion (a), but we have previously found similarly general language insufficient to satisfy clear statement requirements. For example, we have held that a statute providing civil remedies for violations committed by "'*any* recipient of Federal assistance'" was "not the kind of unequivocal statutory language sufficient to abrogate the Eleventh Amendment" even when it was undisputed that a state defendant was a recipient of federal aid. *Atascadero*, 473 U. S., at 245–246 (quoting 29 U. S. C. § 794a(a)(2) (1982 ed.) (emphasis in original)). Instead, we held that "[w]hen Congress chooses to subject the States to federal jurisdiction, it must do so specifically." 473 U. S., at 246. Likewise, § 1367(d) reflects no specific or unequivocal intent to toll the statute of limitations for claims asserted against nonconsenting States, especially considering that such claims do not fall within the proper scope of § 1367(a) as explained above.

With respect to the *dismissals* the tolling provision covers, one could read § 1367(d) in isolation to authorize tolling regardless of the reason for dismissal, but § 1367(d) occurs in the context of a statute that specifically contemplates only a few grounds for dismissal. The requirements of § 1367(a) make clear that a claim will be subject to dismissal if it fails to "form part of the same case or controversy" as a claim within the district court's original jurisdiction. Likewise, § 1367(b) entails that certain claims will be subject to dismissal if exercising jurisdiction over them would be "inconsistent" with 28 U. S. C. § 1332 (1994 ed. and Supp. V). Finally, § 1367(c) (1994 ed.) lists four specific situations in which a district court may decline to exercise supplemental jurisdiction over a particular claim. Given that particular context, it is unclear if the tolling provision was meant to apply to dismissals for reasons unmentioned by the statute, such as dismissals on Eleventh Amendment grounds. See *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 809 (1989) ("It is a fundamental canon of statutory construction

that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"). In sum, although § 1367(d) may not clearly exclude tolling for claims against nonconsenting States dismissed on Eleventh Amendment grounds, we are looking for a clear statement of what the rule *includes*, not a clear statement of what it *excludes*. See *Gregory*, *supra*, at 467. Section 1367(d) fails this test. As such, we will not read § 1367(d) to apply to dismissals of claims against nonconsenting States dismissed on Eleventh Amendment grounds.

In anticipation of this result, petitioners argue that the tolling provision should be interpreted to apply to their claims because Congress enacted it to prevent due process violations caused by state claim preclusion and anti-claim-splitting laws. Brief for Petitioners 45; Reply Brief for Petitioners 5–12. In other words, petitioners contend that Congress enacted the tolling provision to enforce the Due Process Clause of the Fourteenth Amendment against perceived state violations. We have previously addressed the argument that if a statute were passed pursuant to Congress' § 5 powers under the Fourteenth Amendment, federalism concerns "might carry less weight." *Gregory*, 501 U. S., at 468. We concluded, however, that "the Fourteenth Amendment does not override all principles of federalism," *id.*, at 469, and held that insofar as statutory intent was ambiguous, we would "not attribute to Congress an intent to intrude on state governmental functions regardless of whether Congress acted pursuant to . . . § 5 of the Fourteenth Amendment." *Id.*, at 470. That same rule applies here. As already demonstrated, it is far from clear whether Congress intended tolling to apply when claims against nonconsenting States were dismissed on Eleventh Amendment grounds. Thus, it is not relevant whether Congress acted pursuant to § 5.

Petitioners also argue that our construction of the statute does not resolve their case because respondent consented to

suit in federal court. Reply Brief for Petitioners 2–4. We have stated that "[a] sovereign's immunity may be waived" and have "held that a State may consent to suit against it in federal court." *Pennhurst*, 465 U. S., at 99 (citing *Clark* v. *Barnard*, 108 U. S. 436, 447 (1883)). Petitioners claim that respondent consented to suit by not moving to dismiss petitioners' state law claims on Eleventh Amendment grounds until July 1997, some 10 months after the federal lawsuits were filed in August 1996. Yet respondent raised its Eleventh Amendment defense at the earliest possible opportunity by including that defense in its answers that were filed in September 1996. Given that, we cannot say that respondent "unequivocally expressed" a consent to be sued in federal court. *Pennhurst*, *supra*, at 99 (citing *Edelman* v. *Jordan*, 415 U. S. 651, 673 (1974)). The fact that respondent filed its motion in July 1997 is as consistent with adherence to the pretrial schedule as it is with anything else.

Indeed, such circumstances are readily distinguishable from the limited situations where this Court has found a State consented to suit, such as when a State voluntarily invoked federal court jurisdiction or otherwise "ma[de] a 'clear declaration' that it intends to submit itself to our jurisdiction." *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 676 (1999). And even if we were to assume for the sake of argument that consent could be inferred "from the failure to raise the objection at the outset of the proceedings," *Wisconsin Dept. of Corrections* v. *Schacht*, 524 U. S., at 395 (KENNEDY, J., concurring)—a standard this Court has not adopted—consent would still not be found here since respondent raised the issue in its answer. Thus, we find no merit to petitioners' argument that respondent was a consenting state defendant during the federal court proceedings. We express no view on the application or constitutionality of § 1367(d) when a State consents to suit or when a defendant is not a State.

III

We hold that respondent never consented to suit in federal court on petitioners' state law claims and that § 1367(d) does not toll the period of limitations for state law claims asserted against nonconsenting state defendants that are dismissed on Eleventh Amendment grounds. Therefore, § 1367(d) did not operate to toll the period of limitations for petitioners' claims, and we affirm the judgment of the Minnesota Supreme Court dismissing those claims.

It is so ordered.

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

I join the Court's judgment and its opinion in principal part. I agree with the decision's twin rulings. First, prevailing precedent supports the view that, in the absence of a clear statement of congressional intent to abrogate the States' Eleventh Amendment immunity, 28 U. S. C. § 1367(a)'s extension of federal jurisdiction does not reach claims against nonconsenting state defendants. See *ante*, at 540–542. Second, absent "affirmative indicatio[n]" by Congress, see *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 787 (2000), § 1367(d)'s tolling provision does not reach claims "asserted," but not maintainable, under § 1367(a) against nonconsenting state defendants. See *ante*, at 542–545.

The pathmarking decision, it appears to me, is *Vermont Agency*.[1] There, the Court declined to read the word "person," for purposes of *qui tam* liability, to include a nonconsenting State. Bolstering the Court's conclusion in *Vermont Agency* were the two reinforcements pivotal here:

[1] This Court's majority, in contrast to the Minnesota Supreme Court, does not invoke *Alden* v. *Maine*, 527 U. S. 706 (1999), in support of today's decision. I joined the dissent in *Alden* and, in a suitable case, would join a call to reexamine that decision. Cf. *post*, at 554–555 (STEVENS, J., dissenting).

first, "'the ordinary rule of statutory construction' that 'if Congress intends to alter the usual constitutional balance between States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute,'" 529 U. S., at 787 (quoting *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 65 (1989)); and second, "the doctrine that statutes should be construed so as to avoid difficult constitutional questions," 529 U. S., at 787. I would not venture further into the mist surrounding § 1367 to inquire, generally, whether § 1367(d) "appl[ies] to dismissals for reasons unmentioned by the statute," *ante*, at 545.[2]

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE BREYER join, dissenting.

The federal interest in the fair and efficient administration of justice is both legitimate and important. To vindicate that interest federal rulemakers and judges have occasionally imposed burdens on the States and their judiciaries. Thus, for example, Congress may provide for the adjudication of federal claims in state courts, *Testa* v. *Katt*, 330 U. S. 386 (1947), and may direct that state litigation be stayed during the pendency of bankruptcy proceedings, 11 U. S. C. § 362(a). In appropriate cases federal judges may enjoin the prosecution of state judicial proceedings.[1] By virtue of the Supremacy Clause in Article VI of the Constitution, in all such cases the federal rules prevail "and the Judges in every

[2] The supplemental jurisdiction statute, well-reasoned commentary indicates, "is clearly flawed and needs repair." Oakley, Prospectus for the American Law Institute's Federal Judicial Code Revision Project, 31 U. C. D. L. Rev. 855, 936 (1998); see generally *id.*, at 936–945 (canvassing problems with 28 U. S. C. § 1367). For a proposed repair of § 1367, see ALI, Federal Judicial Code Revision Project (Tent. Draft No. 2, Apr. 14, 1998).

[1] The Anti-Injunction Act, 28 U. S. C. § 2283 (1994 ed.), provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

The "supplemental jurisdiction" provisions of the Judicial Improvements Act of 1990, 28 U. S. C. § 1367 (1994 ed.), impose a lesser burden on the States than each of these examples, and do so only in a relatively narrow category of cases—those in which both federal- and state-law claims are so related "that they form part of the same case or controversy." Adopting a recommendation of the Federal Courts Committee, Congress in § 1367(a) overruled our misguided decision in *Finley* v. *United States*, 490 U. S. 545 (1989), and expressly authorized federal courts to entertain such cases even when the state-law claim is against a party over whom there is no independent basis for federal jurisdiction.[2]

Subsection (d) of § 1367 responds to the risk that the plaintiff's state-law claim, even though timely when filed as a part of the federal lawsuit, may be dismissed after the state period of limitations has expired. To avoid the necessity of duplicate filings, it provides that the state statute shall be tolled while the claim is pending in federal court and for 30 days thereafter.[3] The impact of this provision on the defendant is minimal, because the timely filing in federal court provides it with the same notice as if a duplicate complaint had also been filed in state court.

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[2] Title 28 U. S. C. § 1367(a) provides:

"Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

[3] Section 1367(d) provides:

"The period of limitations for any claim asserted under subsection (a) . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."

The tolling of statutes of limitations is, of course, an ancient[4] and widespread practice.[5] Some federal tolling statutes apply only to federal limitations periods,[6] but others apply to state statutes as well.[7] All of these statutes are broadly worded, and none of them excludes any special category of defendants. The plain text of all these statutes, in-

[4] When an equity bill was dismissed to permit the commencement of an action at law, it was the practice of the English courts to consider the statute of limitations tolled during the pendency of the suit in equity. See, *e. g.*, *Anonimous*, 1 Vern. 73, 73–74, 23 Eng. Rep. 320, 320–321 (Ch. 1682) ("[I]f a man sued in Chancery, and pending the suit here, the statute of limitations attached on his demand, and his bill was afterwards dismissed, as being a matter properly determinable at common law: in such case . . . [the court] would not suffer the statute to be pleaded in bar to his demand"); see also *Sturt* v. *Mellish*, 2 Atk. 610, 615, 26 Eng. Rep. 765, 767 (Ch. 1743); *MacKenzie* v. *Marquis of Powis*, 7 Brown 282, 288, 3 Eng. Rep. 183, 187 (H. L. 1737).

[5] Equitable tolling is a background rule that informs our construction of federal statutes of limitations, *Holmberg* v. *Armbrecht*, 327 U. S. 392, 397 (1946), including those statutes conditioning the Federal Government's waiver of immunity to suit, *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95–96 (1990) ("[T]he same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States"). The rule also is generally applied by state courts, such as the Minnesota courts adjudicating claims under the Minnesota Human Rights Act (MHRA). See, *e. g.*, *Ochs* v. *Streater, Inc.*, 568 N. W. 2d 858, 860 (Minn. App. 1997).

[6] See, *e. g.*, 8 U. S. C. § 1182(a)(9)(B)(iv) (tolling an alien's period of unlawful presence in the United States during certain immigration proceedings); 28 U. S. C. § 2263(b) (1994 ed., Supp. V) (tolling the statute of limitations on filing for habeas corpus relief); 29 U. S. C. § 1854(f) (1994 ed., Supp. V) (tolling the statute of limitations on actions for bodily injury or death to a migrant farmworker).

[7] See, *e. g.*, 11 U. S. C. § 108 (tolling during bankruptcy); 50 U. S. C. App. § 525 (1994 ed.) (Soldiers' and Sailors' Civil Relief Act of 1940) (tolling during military service); 15 U. S. C. § 6606(e)(4) (Y2K Act) (tolling during notice and remediation period for Year 2000 related claims); cf. 42 U. S. C. § 9658 (1994 ed.) (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) (setting uniform limitations-period commencement date in suits under state law for damages due to hazardous release exposure).

cluding § 1367, applies to cases in which a State, or an arm of a State, is named as a defendant. Thus, as the Minnesota Court of Appeals correctly held, "the plain language of subsection (d) allows tolling of any claim dismissed by a federal district court, whether dismissed on Eleventh Amendment grounds or at the discretion of the federal district court under subsection (c)."[8]

The Minnesota Supreme Court reversed, because it considered this Court's holding in *Alden* v. *Maine*, 527 U. S. 706 (1999), to compel the view that § 1367(d) was an invalid attempt by Congress to make the State of Minnesota subject to suit in state court without its consent.[9] Unlike the State in *Alden*, however, Minnesota has given its consent to be sued in its own courts for alleged violations of the MHRA within 45 days of receipt of a notice letter from the State Department of Human Rights. The question whether that timeliness condition may be tolled during the pendency of an action filed in federal court within the 45-day period is quite different from the question whether Congress can entirely abrogate the State's sovereign immunity defense. For the Court's Eleventh Amendment jurisprudence concerns the question *whether* an unconsenting sovereign may be sued, rather than *when* a consenting sovereign may be sued.

The Court recognized this crucial distinction in *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89 (1990), a case in which the application of equitable tolling to a waiver of federal sovereign immunity was at issue. Although the Court required the Government's assent as to whether it may be sued to be "unequivocally expressed," it presumed the rule of equitable tolling applied once assent was established because tolling would "amoun[t] to little, if any, broadening of the congressional waiver." *Id.*, at 95. The Court

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[8] 604 N. W. 2d 128, 132–133 (2000).

[9] See 620 N. W. 2d 680, 686 (2001) ("[W]e read *Alden* to require that the University's waiver of immunity be limited to the [45-day limitations period]").

reached this holding despite the inclusion in the waiver provision of a limitations period shorter than the one for suits against private parties.

The waiver at issue in this case is more unequivocally expressed than the one in *Irwin*. Minnesota has consented to suit under the MHRA by agreeing to be treated in the same manner as a private employer.[10] The 45-day limitations period is thus applicable to *any* suit under the MHRA, not only those against state entities. In light of such a clear consent to suit, unencumbered by any special limitations period, it is evident that tolling under § 1367(d) similarly "amounts to little, if any, broadening of the [legislature's] waiver."[11] *Ibid.* Given the fact that the timely filing in Federal Court served the purposes of the 45-day period,[12] it

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[10] See Minn. Stat. § 363.01, subds. 17 and 28 (2000) (defining "employer" to include private entities and "the state and its departments, agencies, and political subdivisions").

[11] It is true enough that we "ha[ve] never held that waivers of a State's immunity presumptively include all federal tolling rules," *ante*, at 543. Of course, we have never held to the contrary, either. But surely our federal sovereign immunity cases shed great light on the question, given our similarly strict analyses of waivers in federal and state sovereign immunity cases. See *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 682 (1999) ("[I]n the context of *federal* sovereign immunity—obviously the closest analogy to the present case—it is well established that waivers are not implied. . . . We see no reason why the rule should be different with respect to state sovereign immunity" (citation omitted)).

As the Court observes, *ante*, at 542–543, our federal sovereign immunity cases recognize that a limitations period may serve as a central condition of waiver. The teaching of *Irwin*, however, is that even when a limitations period is a "condition to the waiver of sovereign immunity and thus must be strictly construed," 498 U. S., at 94, application of tolling to that period is presumptively permissible. I can "see no reason why the rule should be different with respect to state sovereign immunity." *College Savings Bank*, 527 U. S., at 682.

[12] The university received notice of the claim and was able to take part fully in the prosecution of the litigation by engaging in extensive discovery and participating in mediation.

seems to me quite clear that the application of the tolling rule does not raise a serious constitutional issue.[13]

It is true, of course, that the federal tolling provision, like any other federal statute that pre-empts state law, "affects the federal balance" even though it does not "constitut[e] an abrogation of state sovereign immunity." *Ante*, at 544. But that consequence is surely not sufficient to exclude state parties from the coverage of statutes of general applicability like the Bankruptcy Code, the Soldiers' and Sailors' Civil Relief Act of 1940, or any other federal statute whose general language creates a conflict with a pre-existing rule of state law.[14] In my judgment, the specific holding in *Alden* v. *Maine* represented a serious distortion of the federal balance intended by the Framers of our Constitution. If that case is now to provide the basis for a rule of construction that will exempt state parties from the coverage of federal statutes of general applicability, whether or not abrogation of Eleventh Amendment immunity is at stake, it will foster unintended and unjust consequences and impose serious burdens on an already-overworked Congress.[15] Indeed, that risk provides

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[13] Indeed, as an alternative basis for its decision, the Minnesota Court of Appeals concluded that equitable tolling was appropriate. See 604 N. W. 2d, at 133–134. The Minnesota Supreme Court did not disagree with the conclusion that equitable tolling was permissible, but rather found no abuse of discretion in the trial court's refusal of such tolling. See 620 N. W. 2d, at 687.

[14] See, *e. g.*, *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000) (finding pre-emption of common-law tort action by National Traffic and Motor Vehicle Safety Act of 1966); *Boggs* v. *Boggs*, 520 U. S. 833 (1997) (finding pre-emption of state community property laws by Employee Retirement Income Security Act of 1974).

[15] It may also impose serious burdens on already-overworked state courts. Claims brought under state antidiscrimination statutes such as the MHRA, for example, will often be bound up with claims under similar federal statutes, such as 42 U. S. C. § 1983 (1994 ed., Supp. V); Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* (1994 ed. and Supp. V); and the Age Discrimination in Employment Act (ADEA), 29 U. S. C. § 621 *et seq.* (1994 ed. and Supp. V). The state courts have concurrent

an additional reason for reexamining that misguided decision at the earliest opportunity.

Accordingly, I respectfully dissent.

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jurisdiction over these federal statutes. *Felder* v. *Casey*, 487 U. S. 131, 139 (1988) (§ 1983); *Yellow Freight System, Inc.* v. *Donnelly*, 494 U. S. 820 (1990) (Title VII); 29 U. S. C. § 626(c)(1) (ADEA). As a result of the Court's reading of § 1367(d), many litigants with such mixed claims against state entities may decide to file their entire suits in state court. By doing so, they avoid the cost and confusion of duplicate filings. They also eliminate the risk that a time bar will attach to a claim dismissed from federal court on Eleventh Amendment grounds, which might occur even when, as in this case, Eleventh Amendment immunity was not evident at the time the suit was filed. Thus, in attempting to preserve the "balance between the States and the Federal Government," *ante*, at 543, the Court risks upending that balance by removing from the state courts the assistance of the federal courts in adjudicating many claims.

REPORTER'S NOTE

The next page is purposely numbered 801. The numbers between 555 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 1, 2001, THROUGH MARCH 1, 2002

OCTOBER 1, 2001

Appointment of Marshal

It is ordered that Pamela Talkin be, and she hereby is, appointed Marshal of this Court, effective July 16, 2001.

Certiorari Granted—Vacated and Remanded

No. 00–1649. COUNTY OF HUMBOLDT ET AL. *v.* HEADWATERS FOREST DEFENSE ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Saucier* v. *Katz*, 533 U. S. 194 (2001). Reported below: 240 F. 3d 1185.

No. 00–1875. TIME WARNER ENTERTAINMENT CO. ET AL. *v.* SIX FLAGS OVER GEORGIA ET AL. Ct. App. Ga. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U. S. 424 (2001). Reported below: 245 Ga. App. 334, 537 S. E. 2d 397.

No. 00–9044. JACKSON *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for the Acting Commissioner of Social Security filed June 20, 2001. Reported below: 234 F. 3d 246.

Certiorari Dismissed

No. 00–9762. PETERSON *v.* GULF CORRECTIONAL INSTITUTE. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–9763. PETERSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pau-*

peris denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–9901. FORDJOUR *v.* COHEN ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 225 F. 3d 662.

No. 00–10565. HAMILTON *v.* GARCIA, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 253 F. 3d 709.

No. 00–10716. MCREYNOLDS *v.* BRODERICK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 278 App. Div. 2d 6, 717 N. Y. S. 2d 139.

No. 00–10747. CHURCH *v.* VIRGINIA. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–10885. HARVEY *v.* HAHN, WARDEN. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–10891. FORDJOUR *v.* GMAC MORTGAGE CORP. ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5073. CAMARENA *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5136. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 790 So. 2d 1107.

No. 01–5163. THOMAS *v.* KING, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5164. THOMAS *v.* WETHERINGTON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5244. FORDJOUR *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5404. HEMMERLE *v.* LAUDERDALE REPORTING SERVICE. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 00–9894. VARGAS *v.* GEORGIA. Super. Ct. Gwinnett County, Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–9927. HIGGASON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY (two judgments). C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–10308. HEAD *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal mat-

ters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 00–10627. SOUTHERLAND *v.* SANNA ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 248 F. 3d 1179.

No. 00–10755. KUKES *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. D–2238. IN RE DISBARMENT OF ZDRAVKOVICH. Disbarment entered. [For earlier order herein, see 531 U. S. 1138.]

No. D–2257. IN RE DISCIPLINE OF HANNA. Hanna Zaki Hanna, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2258. IN RE DISCIPLINE OF ARON. Ruthann Aron, of Potomac, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2259. IN RE DISCIPLINE OF WISEHART. Arthur McKee Wisehart, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2260. IN RE DISCIPLINE OF MERCER. S. Hal Mercer IV, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2261. IN RE DISCIPLINE OF MCPHEE. William Craig McPhee, of Holbrook, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2262. IN RE DISCIPLINE OF ESTRINE. Andrew B. Estrine, of Boca Raton, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2263. IN RE DISCIPLINE OF LALLO. John Francis Lallo, of Westerly, R. I., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2264. IN RE DISCIPLINE OF GOLDSTEIN. Jerrold D. Goldstein, of North Plainfield, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2265. IN RE DISCIPLINE OF DON. Berek Paul Don, of Englewood Cliffs, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2266. IN RE DISCIPLINE OF GUTIERREZ. Maria Cristina Gutierrez, of Towson, Md., is suspended from the practice of

law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2267. IN RE DISCIPLINE OF CLARKE. Patrick Emmett Clarke, of San Antonio, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2268. IN RE DISCIPLINE OF KASZYNSKI. William Paul Kaszynski, of St. Paul, Minn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2269. IN RE DISCIPLINE OF HALLER. William Bernard Haller, of St. Louis, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2270. IN RE DISCIPLINE OF CLINTON. Bill Clinton, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2271. IN RE DISCIPLINE OF NOBLE. Ford Lee Noble, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2272. IN RE DISCIPLINE OF PEES. Randall W. Pees, of Columbus, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2273. IN RE DISCIPLINE OF GRAND. Thomas L. Grand, Jr., of New Orleans, La., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2274. IN RE DISCIPLINE OF LEGG. Wayne E. Legg, of Scottsdale, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 01M1. MAHAFFEY *v.* ILLINOIS. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 01M2. MAGWINOFF *v.* VIZCAYA;
No. 01M3. COLEY *v.* NORTH CAROLINA INDUSTRIAL COMMISSION ET AL.;
No. 01M4. FLETCHER *v.* PENNSYLVANIA STATE UNIVERSITY ET AL.;
No. 01M5. POOLE *v.* GENERAL ACCOUNTING OFFICE;
No. 01M7. LAZOR *v.* CALIFORNIA;
No. 01M8. PHILLIPS *v.* JOHNSON, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION;
No. 01M9. CALHOUN *v.* SPELLING TELEVISION, INC., ET AL.;
No. 01M10. JOHNSON *v.* ADAMS, WARDEN;
No. 01M11. QUINTERO *v.* UNITED STATES;
No. 01M13. REESE *v.* BAYVIEW ELECTRIC CO. ET AL.; and
No. 01M14. KASHELKAR *v.* MACCARTNEY ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01M6. DARNE *v.* JUNTUNEN ET AL. Motion to dispense with printing the petition for writ of certiorari in compliance with this Court's Rule 33.1 denied.

No. 01M12. DOE *v.* UNIVERSITY OF CINCINNATI COLLEGE OF MEDICINE ET AL. Motion for leave to file petition for writ of certiorari under a pseudonym denied.

No. 01M15. ANDERSON *v.* CALDERON, WARDEN. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 129, Orig. VIRGINIA *v.* MARYLAND. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $181,228.28 for the period October 10, 2000, through July 31, 2001, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 532 U. S. 969.]

No. 00–1072. EDELMAN *v.* LYNCHBURG COLLEGE. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1089. TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. *v.* WILLIAMS. C. A. 6th Cir. [Certiorari granted, 532 U. S. 970.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1187. MCKUNE, WARDEN, ET AL. *v.* LILE. C. A. 10th Cir. [Certiorari granted, 532 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1214. ALABAMA *v.* SHELTON. Sup. Ct. Ala. [Certiorari granted, 532 U. S. 1018.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 00–1249. THOMAS ET AL. *v.* CHICAGO PARK DISTRICT. C. A. 7th Cir. [Certiorari granted, 532 U. S. 1051.] Motion of International City-County Management Association et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1307. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY *v.* SIGMON COAL CO., INC., ET AL. C. A. 4th Cir. [Certiorari granted *sub nom. Halter* v. *Sigmon Coal Co., Inc.*, 532 U. S. 993.] Motion of the Solicitor General for divided argument and to allow United Mine Workers of America Combined Fund leave to participate in oral argument as *amicus curiae* granted.

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928.] Motion of Verizon Maryland Inc. to dispense with printing the joint appendix granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 00–1842. STATOIL ASA *v.* HEEREMAC V. O. F. ET AL. C. A. 5th Cir.;

No. 00–1860. MEMORIAL HOSPITALS ASSN. *v.* HUMPHREY. C. A. 9th Cir.; and

No. 00–1926. AMERICAN INSURANCE ASSN. ET AL. *v.* LOW, COMMISSIONER OF INSURANCE OF CALIFORNIA. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 00–8452. ATKINS *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, 533 U. S. 976.] Order entered September 25, 2001, is amended as follows: Motion for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether the execution of mentally retarded individuals convicted of capital crimes violates the Eighth Amendment?"

No. 00–9054. COREY *v.* MENDEL ET AL. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [532 U. S. 1036] denied.

No. 00–9491. JOHNSON *v.* WYOMING. Dist. Ct. Wyo., Laramie County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [532 U. S. 1036] denied.

No. 00–10065. ANDERSON *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [533 U. S. 926] denied.

No. 00–9280. KELLY *v.* SOUTH CAROLINA. Sup. Ct. S. C. [Certiorari granted, 533 U. S. 928.] Motion of appointment of counsel granted, and it is ordered that David I. Bruck, Esq., of Columbia, S. C., be appointed to serve as counsel for petitioner in this case.

No. 00–9285. MICKENS *v.* TAYLOR, WARDEN. C. A. 4th Cir. [Certiorari granted, 532 U. S. 970.] Motion of Legal Ethicists et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–9939. MATTHEWS *v.* SPALDING, DIRECTOR, IDAHO DEPARTMENT OF CORRECTIONS. C. A. 9th Cir.;

No. 00–10003. ZHANG *v.* ARIZONA STATE UNIVERSITY ET AL. C. A. 9th Cir.;

No. 00–10139. CHRISTEN *v.* ALABAMA. Ct. Civ. App. Ala.;
No. 00–10391. THOMAS SHAKIR *v.* SCHLEIN ET AL. Ct. App. D. C.;
No. 00–10445. GERMANO ET UX. *v.* FIRST NATIONAL BANK OF BETHANY ET AL. C. A. 5th Cir.;
No. 00–10458. MATIMA *v.* AYERST LABORATORIES, INC. C. A. 2d Cir.;
No. 00–10710. DRYDEN *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir.;
No. 01–5359. DOE *v.* NOE ET AL. (two judgments). App. Ct. Ill., 4th Dist.;
No. 01–5413. OLUFEMI *v.* DEKALB COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES. C. A. 11th Cir.;
No. 01–5533. JONES *v.* MERIT SYSTEMS PROTECTION BOARD (two judgments). C. A. Fed. Cir.;
No. 01–5756. SHEA *v.* BOARD OF TRUSTEES, TEACHERS' PENSION AND ANNUITY FUND. Super. Ct. N. J., App. Div.; and
No. 01–5999. RIDLEY *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 22, 2001, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 00–10769. MANN *v.* THALACKER, WARDEN. C. A. 8th Cir. Motion of respondent to strike petition for writ of certiorari and to seal petitioner's appendix granted without prejudice to counsel for petitioner submitting a redacted petition for writ of certiorari, with the appendix under seal, on or before October 22, 2001.

No. 01–163. IN RE RETTIG. C. A. 6th Cir. Petition for writ of common-law certiorari denied.

No. 01–5349. IN RE YOUNG. D. C. W. D. Ky. Petition for writ of common-law certiorari denied.

No. 00–10558. IN RE BROADES;
No. 00–10730. IN RE COLE;
No. 00–10829. IN RE MCSHEFFREY;
No. 00–10849. IN RE ASBERRY;
No. 00–10860. IN RE CASTELLANOS;
No. 00–10863. IN RE HETHERINGTON;
No. 00–10869. IN RE COTHRUM;

No. 00–10884. IN RE BAUDER;
No. 01–56. IN RE GARCIA;
No. 01–88. IN RE FELDMAN;
No. 01–5005. IN RE ALONSO LONDONO;
No. 01–5021. IN RE CANA-RUIZ;
No. 01–5029. IN RE PORTER;
No. 01–5055. IN RE NEUFVILLE;
No. 01–5083. IN RE HEDGES ET AL.;
No. 01–5090. IN RE MARTIN;
No. 01–5137. IN RE MONTGOMERY;
No. 01–5149. IN RE WOODS;
No. 01–5155. IN RE GIURA;
No. 01–5315. IN RE GONZALEZ;
No. 01–5360. IN RE DRAPER;
No. 01–5428. IN RE TAYLOR;
No. 01–5523. IN RE GOODWIN;
No. 01–5550. IN RE YAPP;
No. 01–5554. IN RE MURRAY;
No. 01–5558. IN RE BROWN;
No. 01–5653. IN RE ADIO-MOWO;
No. 01–5700. IN RE WIGGINS;
No. 01–5741. IN RE MONREAL;
No. 01–5755. IN RE DEVAUGHN;
No. 01–5928. IN RE WALDEN; and
No. 01–6033. IN RE GRAVES. Petitions for writs of habeas corpus denied.

No. 00–10748. IN RE CHURCH. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 00–10761. IN RE CHURCH. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's rule 39.8.

No. 00–10105. IN RE ROBINSON;
No. 00–10292. IN RE BERRY;
No. 00–10336. IN RE VANN;
No. 00–10390. IN RE ROBINSON;
No. 00–10485. IN RE ABDELMESSIH;
No. 00–10487. IN RE RODRIGUEZ-PADRON;
No. 00–10513. IN RE DUNNINGTON;
No. 00–10532. IN RE YOUNG;

No. 00–10591. IN RE DORE;
No. 00–10592. IN RE AINSWORTH;
No. 00–10650. IN RE GUNNELL;
No. 00–10652. IN RE GAINES;
No. 00–10701. IN RE SCHREIBER;
No. 00–10722. IN RE CORREA;
No. 00–10851. IN RE JACKSON;
No. 01–5012. IN RE PURCHESS;
No. 01–5348. IN RE BOWEN;
No. 01–5429. IN RE YOUNG; and
No. 01–5544. IN RE TOOTLE. Petitions for writ of mandamus denied.

No. 00–1788. IN RE POLYAK. Motion of petitioner to defer consideration of petition for writ of mandamus denied. Petition for writ of mandamus denied.

No. 01–129. IN RE FERNANDES. Motion of petitioner to defer consideration of petition for writ of mandamus denied. Petition for writ of mandamus denied.

No. 01–148. IN RE POLYAK. Motion of petitioner to defer consideration of petition for writ of mandamus denied. Petition for writ of mandamus denied.

No. 00–1878. IN RE ROSE;
No. 00–9895. IN RE NEWSOME;
No. 00–10178. IN RE ABBEY;
No. 00–10479. IN RE CHAMBERS;
No. 00–10694. IN RE MEHDIPOUR;
No. 00–10795. IN RE CUMMINGS; and
No. 01–5148. IN RE WOODS. Petitions for writs of mandamus and/or prohibition denied.

No. 00–10810. IN RE BRAUN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–173. IN RE DAVIS. Petition for writ of prohibition denied.

Certiorari Granted

No. 00–1781. OAKLAND HOUSING AUTHORITY ET AL. *v.* RUCKER ET AL. C. A. 9th Cir. Certiorari granted, case consolidated with No. 00–1770, *Department of Housing and Urban Development* v. *Rucker et al.* [certiorari granted, 533 U. S. 976], and a total of one hour allotted for oral argument. JUSTICE BREYER took no part in the consideration or decision of this petition and this order. Reported below: 237 F. 3d 1113.

Certiorari Denied. (See also Nos. 01–163 and 01–5349, *supra.*)

No. 00–1393. CO-STEEL RARITAN *v.* NEW JERSEY BOARD OF PUBLIC UTILITIES. Sup. Ct. N. J. Certiorari denied.

No. 00–1506. CASH AMERICA INTERNATIONAL, INC., ET AL. *v.* SPARKS. Sup. Ct. Ala. Certiorari denied. Reported below: 789 So. 2d 231.

No. 00–1526. GARCIA CISNEROS *v.* UNITED STATES; and
No. 00–9419. MAREK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 238 F. 3d 310.

No. 00–1534. NEWELL RECYCLING CO., INC. *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. 5th Cir. Certiorari denied. Reported below: 231 F. 3d 204.

No. 00–1545. BIELFELDT ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 231 F. 3d 1035.

No. 00–1556. FEJES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 696.

No. 00–1558. SELDOWITZ *v.* OFFICE OF INSPECTOR GENERAL, DEPARTMENT OF STATE. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 414.

No. 00–1561. GODON *v.* NORTH CAROLINA CRIME CONTROL AND PUBLIC SAFETY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 412.

No. 00–1571. WALKER *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 34.

No. 00–1588. OMAN *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 737 N. E. 2d 1131.

No. 00–1597. ECOBAN FINANCE LTD. *v.* GRUPO ACERERO DEL NORTE, S. A. DE C. V., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 2 Fed. Appx. 80.

No. 00–1598. COVEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 232 F. 3d 641.

No. 00–1605. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 235 F. 3d 215.

No. 00–1656. SHALTRY, BANKRUPTCY TRUSTEE, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 1046.

No. 00–1666. GINTHER *v.* GINTHER TRUSTS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 238 F. 3d 686.

No. 00–1669. FLEETWOOD HOMES OF FLORIDA ET AL. *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1298.

No. 00–1674. DOW AGROSCIENCES LLC ET AL. *v.* SLEATH ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 304 Mont. 1, 16 P. 3d 1042.

No. 00–1680. PACIFIC BELL TELEPHONE CO. ET AL. *v.* WAYNE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1048.

No. 00–1682. TRIGALET ET AL., PERSONAL REPRESENTATIVES OF THE ESTATE OF TRIGALET, ET AL. *v.* CITY OF TULSA. C. A. 10th Cir. Certiorari denied. Reported below: 239 F. 3d 1150.

No. 00–1683. CHURCH OF SCIENTOLOGY INTERNATIONAL *v.* TIME WARNER, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 238 F. 3d 168.

No. 00–1685. OKLAHOMA EX REL. TAL ET AL. *v.* CITY OF OKLAHOMA CITY ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 19 P. 3d 268.

No. 00–1687. ALLNUTT, AKA SOVEREIGN EQUIPMENT CO. ET AL. *v.* FRIEDMAN, CHAPTER 11 TRUSTEE FOR THE BANK-

RUPTCY ESTATES OF ALLNUTT. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 410.

No. 00–1688. STEPPENWOLF PRODUCTIONS, INC., ET AL. *v.* KASSBAUM, AKA ST. NICHOLAS. C. A. 9th Cir. Certiorari denied. Reported below: 236 F. 3d 487.

No. 00–1691. PICCIOTTO ET AL. *v.* ZABIN ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 433 Mass. 1007, 741 N. E. 2d 853.

No. 00–1692. WETLANDS ACTION NETWORK ET AL. *v.* UNITED STATES ARMY CORPS OF ENGINEERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 222 F. 3d 1105.

No. 00–1695. SCOTT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–1700. U-HAUL INTERNATIONAL, INC., ET AL. *v.* ROMANO. C. A. 1st Cir. Certiorari denied. Reported below: 233 F. 3d 655.

No. 00–1703. LOVITT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 260 Va. 497, 537 S. E. 2d 866.

No. 00–1704. BROWN *v.* MCCORMICK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 215.

No. 00–1706. POCRASS *v.* MAXCONN, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 4 Fed. Appx. 928.

No. 00–1708. L. B. FOSTER CO. *v.* DAWSON CONSTRUCTION PLANT LTD. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 738.

No. 00–1709. RICE-LAMAR *v.* CITY OF FORT LAUDERDALE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 836.

No. 00–1710. WITMAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 750 A. 2d 327.

No. 00–1712. VENEKLASE ET AL. *v.* CITY OF FARGO. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 738.

No. 00–1714. TUCKER ET VIR *v.* FISCHBEIN ET AL.; and

No. 00–1723. FISCHBEIN *v.* TUCKER ET VIR. C. A. 3d Cir. Certiorari denied. Reported below: 237 F. 3d 275.

No. 00–1715. PATEL *v.* HESTON, DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 376.

No. 00–1716. NEVARES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–1718. KANSAS CITY SOUTHERN RAILWAY CO., INC. *v.* JOHNSON ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 798 So. 2d 374.

No. 00–1719. VASQUEZ *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 233 F. 3d 688.

No. 00–1720. PENNSYLVANIA ASSOCIATION OF EDWARDS HEIRS *v.* RIGHTENOUR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 235 F. 3d 839.

No. 00–1724. JIE HU ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 239 F. 3d 138.

No. 00–1726. TUCKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 499.

No. 00–1727. WALKER *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 00–1728. BROWN ET AL. *v.* CITY OF ONEONTA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 221 F. 3d 329.

No. 00–1729. BOGREN *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 236 F. 3d 399.

No. 00–1732. CONTRERAS *v.* LOCAL 46, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 673.

No. 00–1735. SAKTHIVEIL *v.* OSBORN. Ct. App. Ariz. Certiorari denied.

No. 00–1738. KING *v.* STUBBLEFIELD, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–1739. JANIK ET AL. *v.* AMICA MUTUAL INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 247 F. 3d 241.

No. 00–1740. BROWN *v.* KINNEY SHOE CORP., DBA FOOT LOCKER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 556.

No. 00–1741. COMMUNITIES FOR A GREAT NORTHWEST ET AL. *v.* VAUGHEY, MONTANA COMMISSIONER OF POLITICAL PRACTICES, ET AL.;

No. 00–1754. I–125 PROPONENTS' COMMITTEE *v.* MONTANA CHAMBER OF COMMERCE ET AL.; and

No. 00–1772. VAUGHEY, MONTANA COMMISSIONER OF POLITICAL PRACTICES *v.* MONTANA CHAMBER OF COMMERCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 226 F. 3d 1049.

No. 00–1743. BROWN *v.* LYFORD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 243 F. 3d 185.

No. 00–1745. COOPER ET AL. *v.* POWELL. Sup. Ct. Wis. Certiorari denied. Reported below: 241 Wis. 2d 153, 622 N. W. 2d 265.

No. 00–1746. THURMOND ET AL. *v.* DELLA-CALCE. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 140.

No. 00–1748. WHITE *v.* FRIEDLAND ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–1749. NATURAL PARENTS OF J. B. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Sup. Ct. Fla. Certiorari denied. Reported below: 780 So. 2d 6.

No. 00–1750. MARTINEZ, AS NEXT FRIEND FOR MARTINEZ, A MINOR, ET AL. *v.* CRYSTAL CITY INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 744.

No. 00–1753. FLEECE *v.* RHINES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 300.

No. 00–1755. FREEMAN ET AL. *v.* CITY OF DALLAS. C. A. 5th Cir. Certiorari denied. Reported below: 242 F. 3d 642.

No. 00–1757. GRAY *v.* ENTERGY OPERATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 240 F. 3d 1074.

No. 00–1758. HURST *v.* HOME DEPOT, U. S. A., INC. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 136.

No. 00–1760. EHMANN *v.* NORFOLK SOUTHERN CORP. C. A. 6th Cir. Certiorari denied. Reported below: 241 F. 3d 791.

No. 00–1762. C. M., A MINOR, BY AND THROUGH HER PARENTS, J. M. ET AL., AND ON THEIR OWN BEHALF *v.* BOARD OF EDUCATION OF HENDERSON COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 241 F. 3d 374.

No. 00–1763. REUTZEL *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA (SUPER FRESH FOOD MARKETS). Commw. Ct. Pa. Certiorari denied.

No. 00–1764. INTERCITY MAINTENANCE CO. *v.* LOCAL 254 ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 241 F. 3d 82.

No. 00–1766. KEMP ET AL. *v.* MEDTRONIC, INC. C. A. 6th Cir. Certiorari denied. Reported below: 231 F. 3d 216.

No. 00–1767. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT *v.* LOCKETT ET AL. 19th Jud. Dist. Ct. La., East Baton Rouge Parish. Certiorari denied.

No. 00–1768. LUDWIG *v.* NORTHWEST AIRLINES, INC. C. A. 8th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 558.

No. 00–1769. GRINNELL FIRE PROTECTION SYSTEMS CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 236 F. 3d 187.

No. 00–1771. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 235 F. 3d 858.

No. 00–1773. SWAIN ET AL. *v.* ALLSTATE INSURANCE CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 161.

No. 00–1776. DUNCAN *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. D. C. Cir. Certiorari denied. Reported below: 240 F. 3d 1110.

No. 00–1778. CHRISTIAN *v.* INTERNAL REVENUE SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 579.

No. 00–1780. ROCKEFELLER *v.* NEW MEXICO ET AL. Ct. App. N. M. Certiorari denied.

No. 00–1782. BABAZADEH *v.* FAIRFAX COUNTY BOARD OF SUPERVISORS. Sup. Ct. Va. Certiorari denied.

No. 00–1783. KROSBY *v.* BROWNING ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–1786. FREY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1160.

No. 00–1787. BARRIOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 793.

No. 00–1789. PENSION BENEFIT GUARANTY CORPORATION *v.* BELFANCE, TRUSTEE OF THE COPPERWELD STEEL COMPANY LIQUIDATION TRUST. C. A. 6th Cir. Certiorari denied. Reported below: 232 F. 3d 505.

No. 00–1791. FORE *v.* HADSELL ET UX. Ct. App. Ariz. Certiorari denied.

No. 00–1792. MUZZI *v.* CIMARRON SOFTWARE SERVICE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 434.

No. 00–1794. LOUISIANA PHILHARMONIC ORCHESTRA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1139.

No. 00–1796. BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION ET AL.; BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION; and BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION. Ct. App. Mich. Certiorari denied.

No. 00–1797. RAMOS *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 00–1798. WOLFORK, AS PARENT AND NEXT FRIEND OF MINOR, WOLFORK *v.* TACKETT ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 328, 540 S. E. 2d 611.

No. 00–1799. TURNER *v.* BENEFICIAL CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 242 F. 3d 1023.

No. 00–1800. KIA P., INDIVIDUALLY AND ON BEHALF OF MORA P., AN INFANT *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 235 F. 3d 749.

No. 00–1801. WEIR ET UX. *v.* CITY OF SPRINGFIELD. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 315 Ill. App. 3d 1239, 777 N. E. 2d 1094.

No. 00–1802. BARNAUD *v.* BELLE FOURCHE IRRIGATION DISTRICT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 235 F. 3d 1139.

No. 00–1803. BROWN *v.* KNOX COUNTY ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 39 S. W. 3d 585.

No. 00–1804. MCDONALD *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 100 Wash. App. 828, 1 P. 3d 1176 and 12 P. 3d 649.

No. 00–1806. STANLEY WORKS *v.* CHRISTOPHER. C. A. 1st Cir. Certiorari denied. Reported below: 240 F. 3d 95.

No. 00–1807. CLANCY *v.* EMPLOYERS HEALTH INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1142.

No. 00–1808. KNIGHT *v.* MALENG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 833.

No. 00–1809. KUNGLE *v.* INNOVATIVE PROPERTIES, INC., ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 134 Md. App. 710.

No. 00–1810. JEFFERSON *v.* CAPTAIN D'S RESTAURANT, AKA SHONEY'S INC., ET AL. Ct. App. Tenn. Certiorari denied.

No. 00–1811. PIOTROWSKI *v.* CITY OF HOUSTON. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 567.

No. 00–1814. AROYO-GONZALEZ ET AL. *v.* COAHOMA CHEMICAL CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1138.

No. 00–1816. VARGA ET UX. *v.* ROCKWELL INTERNATIONAL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 242 F. 3d 693.

No. 00–1820. SIMONELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 237 F. 3d 19.

No. 00–1821. STEVENSON, BY AND THROUGH HIS FATHER AND NEXT FRIEND, STEVENSON, ET AL. *v.* MARTIN COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 25.

No. 00–1822. LYNOM *v.* WIDNALL ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 254 F. 3d 315.

No. 00–1823. CHENAULT *v.* TENNESSEE DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1147.

No. 00–1824. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND ET AL. *v.* FULKERSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 238 F. 3d 891.

No. 00–1825. DAVIS *v.* DAVIS. Sup. Ct. Va. Certiorari denied.

No. 00–1827. WILLIAMS *v.* WATTS-WILLOWBROOK CHURCH OF CHRIST ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–1828. MASON *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 587.

No. 00–1830. DENNIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 1295.

No. 00–1832. MALKIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 243 F. 3d 120.

No. 00–1833. VALERIO-OCHOA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 241 F. 3d 1092.

No. 00–1834. SOUTHEAST MEDICAL CONSULTANTS, INC. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 00–1835. ADJIRI *v.* EMORY UNIVERSITY. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 00–1836. NORDSTROM *v.* WEULE. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 823.

No. 00–1837. NELSON ET AL. *v.* TENNESSEE GAS PIPELINE CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 243 F. 3d 244.

No. 00–1838. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1138.

No. 00–1840. LEAVITT, GOVERNOR OF UTAH, ET AL. *v.* DAVID C. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 1206.

No. 00–1841. JMC TELECOM, LLC *v.* AT&T CORP. C. A. 3d Cir. Certiorari denied. Reported below: 254 F. 3d 1078.

No. 00–1843. KOSTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–1844. KHREATIVITY UNLIMITED, INC. *v.* MATTEL, INC. C. A. 2d Cir. Certiorari denied. Reported below: 242 F. 3d 366.

No. 00–1845. MCCALL ET AL. *v.* BURLINGTON NORTHERN/SANTA FE CO., FKA BURLINGTON NORTHERN RAILROAD CO., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 237 F. 3d 506.

No. 00–1846. HUESCA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 199 F. 3d 440.

No. 00–1847. MCCARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 744.

No. 00–1848. KELLOGG *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 2d and 11th Jud. Dists. Certiorari denied.

No. 00–1849. KINLOW ET AL. *v.* CITY OF MILWAUKEE. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 581.

No. 00–1850. CAPITAL LANDMARK II ET AL. *v.* HAMEETMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 751.

No. 00–1851. FACE ET AL. *v.* NATIONAL HOME EQUITY MORTGAGE ASSN. C. A. 4th Cir. Certiorari denied. Reported below: 239 F. 3d 633.

No. 00–1854. RYAN ET AL. *v.* POWELL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 247 F. 3d 520.

No. 00–1855. CHEVRON U. S. A. PRODUCTION CO. *v.* MYERS. Ct. App. La., 3d Cir. Certiorari denied.

No. 00–1856. FERRANTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 6 Fed. Appx. 67.

No. 00–1857. HUSAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 133.

No. 00–1858. COTA *v.* SIMONTON ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–1859. WEINBERG, T/A HILL HOUSE *v.* COMCAST CABLEVISION OF PHILADELPHIA. Super. Ct. Pa. Certiorari denied. Reported below: 759 A. 2d 395.

No. 00–1861. MEMPHIS HOUSING AUTHORITY *v.* THOMPSON. Sup. Ct. Tenn. Certiorari denied. Reported below: 38 S. W. 3d 504.

No. 00–1862. KOHN *v.* AT&T CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–1863. COUNTY OF LOS ANGELES ET AL. *v.* STREIT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 236 F. 3d 552.

No. 00–1864. HOCHEVAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 84.

No. 00–1865. GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 00–1866. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 160.

No. 00–1867. HONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 242 F. 3d 528.

No. 00–1868. GREEN *v.* BELLERIVE CONDOMINIUMS LIMITED PARTNERSHIP. Ct. Sp. App. Md. Certiorari denied. Reported below: 135 Md. App. 563, 763 A. 2d 252.

No. 00–1869. FUSARO *v.* HIALEAH HOUSING AUTHORITY; and No. 01–169. JIMENEZ *v.* HIALEAH HOUSING AUTHORITY. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 213.

No. 00–1870. FULLER *v.* RAYBURN ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–1871. MANNING, A MINOR, BY HIS FATHER AND NEXT FRIEND, MANNING, ET AL. *v.* SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 927.

No. 00–1872. NESET *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 235 F. 3d 415.

No. 00–1873. IN RE KITTRELL. Sup. Ct. Cal. Certiorari denied.

No. 00–1874. FREYESLEBEN *v.* FAIRFAX COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 377.

No. 00–1876. CITIZENS BANK OF WESTON, INC. *v.* CITY OF WESTON. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 209 W. Va. 145, 544 S. E. 2d 72.

No. 00–1877. CONTRERAS *v.* SUNCAST CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 237 F. 3d 756.

No. 00–1879. ROSS *v.* MADDOX, ASSOCIATE JUSTICE, SUPREME COURT OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 794.

No. 00–1880. PICHARDO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 230 F. 3d 44.

No. 00–1881. MUSCHETTE *v.* SIVLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 751.

No. 00–1883. JOHNSTON *v.* MONROE COUNTY COURT. C. A. 7th Cir. Certiorari denied.

No. 00–1884. MORGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 230 F. 3d 1067.

No. 00–1885. JUNCO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1180.

No. 00–1886. BISHOP *v.* BAYLOR UNIVERSITY. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 434.

No. 00–1887. STELZNER ET UX. *v.* COMMISSIONER OF REVENUE OF MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 621 N. W. 2d 736.

No. 00–1888. ARIZONA *v.* DONALD. Ct. App. Ariz. Certiorari denied. Reported below: 198 Ariz. 406, 10 P. 3d 1193.

No. 00–1889. DONOHOO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 232 F. 3d 637.

No. 00–1890. YASA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–1891. SAMSON ET AL. *v.* APOLLO RESOURCES, INC., DBA APOLLO SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 242 F. 3d 629.

No. 00–1892. BURKS *v.* DEPARTMENT OF ARIZONA ECONOMIC SECURITY, EMPLOYMENT TAX AUDIT OFFICE-MESA. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 454.

No. 00–1893. MARTIN, DBA J & L SERVICES, ET AL. *v.* STITES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 621.

No. 00–1895. VOGEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–1896. WATTS *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–1897. COOPER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 411.

No. 00–1898. ENGLISH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–1899. DOBRIN *v.* STATE FARM FIRE & CASUALTY. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 337.

No. 00–1900. ROSS ET AL. *v.* FEDERAL HIGHWAY ADMINISTRATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 692.

No. 00–1901. SCHACHTER ET UX. *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 1031.

No. 00–1902. FIRETAG *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 887.

No. 00–1903. GALLAND ET UX. *v.* CITY OF CLOVIS ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 24 Cal. 4th 1003, 16 P. 3d 130.

No. 00–1904. PIDDINGTON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 241 Wis. 2d 754, 623 N. W. 2d 528.

No. 00–1905. CONNOR *v.* PHILLIPS. Sup. Ct. N. J. Certiorari denied. Reported below: 167 N. J. 83, 769 A. 2d 1047.

No. 00–1906. CARDONA-RIVERA *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 33 S. W. 3d 625.

No. 00–1907. AFFRONTI ET AL. *v.* LIPPMAN, CHIEF ADMINISTRATOR OF THE COURTS OF NEW YORK STATE AND AS REPRESENTATIVE OF THE ADMINISTRATIVE BOARD OF THE JUDICIAL CONFERENCE OF THE STATE OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 713, 746 N. E. 2d 1049.

No. 00–1908. GURARY *v.* UNITED DIAGNOSTIC, INC. C. A. 2d Cir. Certiorari denied. Reported below: 235 F. 3d 792.

No. 00–1909. VAN WYK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 F. 3d 405.

No. 00–1910. BADER *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 344 Ark. 241, 40 S. W. 3d 738.

No. 00–1912. TDY INDUSTRIES, INC., FKA TELEDYNE INDUSTRIES, INC. *v.* KAISER AEROSPACE & ELECTRONICS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 1289.

No. 00–1913. EELLS *v.* KWOK ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–1914. BRYANT *v.* BUMGARNER, ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 663.

No. 00–1915. ASKINS, INDIVIDUALLY AND AS TRUSTEE OF RVA TRUST *v.* COUNTY OF WILLIAMSBURG ET AL. Ct. App. S. C. Certiorari denied.

No. 00–1918. BAGLEY *v.* CITY OF ATLANTA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 794.

No. 00–1919. MARTIN, PERSONAL REPRESENTATIVE OF THE ESTATE OF MARTIN, DECEASED, ET AL. *v.* LABELLE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 492.

No. 00–1921. SIBLEY *v.* GERSTEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 443.

No. 00–1922. AMMEX, INC. *v.* DEPARTMENT OF THE TREASURY OF MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 237 Mich. App. 455, 603 N. W. 2d 308.

No. 00–1923. ATHANASIADES *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–1925. CONSOLIDATED DEVELOPMENT CORP. ET AL. *v.* SHERRITT, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1286.

No. 00–1929. SPITZER ET UX. *v.* TRANS UNION. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 54.

No. 00–1931. CORDERO *v.* MINETA, SECRETARY OF TRANSPORTATION. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–1932. DIBARI, INDIVIDUALLY AND AS LAWFUL GUARDIAN OF MINOR CHILDREN, DIBARI ET AL. *v.* BEDFORD CENTRAL

SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 245 F. 3d 49.

No. 00–1935. PALAZZOLO *v.* GORCYCA. C. A. 6th Cir. Certiorari denied. Reported below: 244 F. 3d 512.

No. 00–1938. WELLS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 749.

No. 00–1939. POINDEXTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 00–1941. SLANEY *v.* INTERNATIONAL AMATEUR ATHLETIC FEDERATION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 244 F. 3d 580.

No. 00–1942. GUTMAN *v.* GUTMAN. Ct. App. Ore. Certiorari denied.

No. 00–1943. FULLER *v.* MINNESOTA OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY. Sup. Ct. Minn. Certiorari denied. Reported below: 621 N. W. 2d 460.

No. 00–1944. FURBY *v.* CHRYSLER CORP. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1148.

No. 00–1945. LENNIX *v.* AIR LIQUIDE OF AMERICA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 786 So. 2d 986.

No. 00–1947. FEINMAN *v.* COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 239 F. 3d 498.

No. 00–1948. FINANCIAL SYSTEMS SOFTWARE (UK) LTD. *v.* FINANCIAL SOFTWARE SYSTEMS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 491.

No. 00–1950. EL SHAHAWY *v.* LEE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 747.

No. 00–1951. GOSSETT *v.* DUNHILL OF CARY, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 664.

No. 00–1952. BROWN *v.* HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 00–1953. SPELL *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–1954. SMITH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 767 A. 2d 1114.

No. 00–8473. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 223 F. 3d 1286.

No. 00–8520. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 223 F. 3d 665.

No. 00–8608. HALLUM *v.* TRANS-STATE LINES, INC. C. A. 6th Cir. Certiorari denied. Reported below: 221 F. 3d 1334.

No. 00–8635. PAUL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 217 F. 3d 989.

No. 00–8681. LEWIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–8719. ORLANDO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 786 So. 2d 1187.

No. 00–8775. WILLIAMS *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 386.

No. 00–8877. KIMBERLIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–8998. SHEPARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 231 F. 3d 56.

No. 00–9035. ELGERSMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–9085. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 229 F. 3d 468.

No. 00–9095. HENRY, AKA JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1177.

No. 00–9165. IN RE NEUFVILLE. C. A. 1st Cir. Certiorari denied.

No. 00–9185. BEN-YISRAYL *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 729 N. E. 2d 102.

No. 00–9191. DULANTO-ANCAYA *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–9243. DIBBLE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 252, 739 N. E. 2d 578.

No. 00–9245. PURCELL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 236 F. 3d 1274.

No. 00–9257. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 676.

No. 00–9273. RHUDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–9288. CARRASCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 246.

No. 00–9290. BELL *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 236 F. 3d 149.

No. 00–9293. WHITTINGHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 161.

No. 00–9299. FOLKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 236 F. 3d 384.

No. 00–9304. BOOKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–9349. TRAVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 1327.

No. 00–9361. ADAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–9373. GERROW, AKA BROWN *v.* UNITED STATES; and
No. 00–10071. FORRESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 831.

No. 00–9375. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–9377. HAMMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 226 F. 3d 229.

No. 00–9381. AIRD, AKA PECHANGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1177.

No. 00–9385. SIRMANS *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 244 Ga. App. 252, 534 S. E. 2d 862.

No. 00–9409. HERNANDEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 227 F. 3d 686.

No. 00–9423. HOWELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 F. 3d 615.

No. 00–9426. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 795.

No. 00–9429. WILLIAMS *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 426.

No. 00–9446. WARREN *v.* BASKERVILLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 233 F. 3d 204.

No. 00–9448. STANDIFER *v.* BENOV, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–9452. WOODS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 789 So. 2d 941.

No. 00–9508. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 213 F. 3d 646.

No. 00–9524. GARCIA-PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 233 F. 3d 577.

No. 00–9525. ISRAEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 00–9545. SWOYER *v.* KERCHER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 371.

No. 00–9546. RAMSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 237 F. 3d 853.

No. 00–9551. SWOYER *v.* MERCHANTS BANK. Sup. Ct. Pa. Certiorari denied.

No. 00–9554. SWOYER *v.* REED. Sup. Ct. Pa. Certiorari denied.

No. 00–9568. HUSKEY *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 382.

No. 00–9581. MORKE *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 413.

No. 00–9596. EBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1355.

No. 00–9602. BAHYESVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–9615. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1178.

No. 00–9619. COBBS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–9633. NANCE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 236 F. 3d 820.

No. 00–9644. WHITELAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 245 F. 3d 791.

No. 00–9645. BLACKWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1354.

No. 00–9708. FILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 746.

No. 00–9713. RADIC *v.* FLAXMAN ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 312 Ill. App. 3d 1210, 769 N. E. 2d 574.

No. 00–9718. GABOW *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 34 S. W. 3d 63.

No. 00–9726. SWOYER *v.* EDGARS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 154.

No. 00–9741. BAYOUD *v.* MIMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–9742. GRANT *v.* JUSTICE COURT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 547.

No. 00–9746. HILGERT *v.* MARK TWAIN/MERCANTILE BANK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 836.

No. 00–9747. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–9748. LEWIS *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 95 N. Y. 2d 539, 742 N. E. 2d 601.

No. 00–9749. LAU *v.* MEDDAUGH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 121 and 1135.

No. 00–9755. TRAINER *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–9756. SZAREWICZ *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–9759. JONES *v.* MARTIN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1149.

No. 00–9770. LACOSS *v.* DALSKY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 422.

No. 00–9773. MAXFIELD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–9776. ROBERTS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 316 Ill. App. 3d 1312, 779 N. E. 2d 531.

No. 00–9779. ALVARADO *v.* SIRMONS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 778.

No. 00–9781. LOTCHES *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 331 Ore. 455, 17 P. 3d 1045.

No. 00–9784. JORDAN *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–9790. PLOWDEN *v.* ROMINE, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 00–9795. WELLS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–9796. NEWBOLD *v.* MISSOURI BOARD OF PROBATION AND PAROLE. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 34 S. W. 3d 403.

No. 00–9797. CALHOUN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9801. ALDEN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–9802. HARRIS *v.* SAUNDERS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 748.

No. 00–9803. HOLLAND *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 773 So. 2d 1065.

No. 00–9804. FOOTLAND *v.* EVANS, SECRETARY OF COMMERCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 887.

No. 00–9805. HART *v.* KITZHABER, GOVERNOR OF OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 381.

No. 00–9809. HALL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 1, 743 N. E. 2d 126.

No. 00–9810. HOPKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 1078.

No. 00–9813. RODRIGUEZ *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–9815. SPIVEY *v.* PAGE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–9816. FLOURNOY *v.* JOHNSON, WARDEN, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 00–9817. HOWARD *v.* GARNER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 212 F. 3d 598.

No. 00–9820. ALBERTO GUTIERREZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9822. HUGHES *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–9823. HUDSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 412.

No. 00–9825. FLOWERS *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–9826. SHABAZZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 245 F. 3d 790.

No. 00–9829. GARZA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9830. JEFFRIES *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–9831. LANE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1185.

No. 00–9833. FLANIGAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9834. FRANCISCO GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 F. 3d 368.

No. 00–9839. RUTHERFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1177.

No. 00–9843. OBI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 239 F. 3d 662.

No. 00–9849. MELVIN *v.* KELLY SPRINGFIELD TIRE CORP. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 888.

No. 00–9850. KILPATRICK *v.* MEADOWS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–9851. MADDOX *v.* ELZIE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 238 F. 3d 437.

No. 00–9855. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9856. MUHAMMAD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 782 So. 2d 343.

No. 00–9858. BROWN *v.* UNITED STATES;
No. 01–5184. JACKSON *v.* UNITED STATES; and
No. 01–5796. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 00–9861. SMITH *v.* SIKES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–9864. DRYSDALE *v.* DRYSDALE. Ct. App. Mich. Certiorari denied.

No. 00–9868. SALTERS *v.* HUGHES, SUPERINTENDENT, AVERY/MITCHELL CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 667.

No. 00–9878. CARTER *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–9882. HILLHOUSE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–9883. HART *v.* KATZ ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–9885. HAMMOUDAH *v.* RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 554.

No. 00–9890. IOANE ET UX. *v.* COUNTY OF SANTA CLARA ET AL. (two judgments). C. A. 9th Cir. Certiorari denied.

No. 00–9892. STALLINGS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 89 Ohio St. 3d 280, 731 N. E. 2d 159.

No. 00–9898. HOWARD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–9899. HALL *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 388.

No. 00–9900. HAMMOND *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–9902. MCGAUGH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9909. BAUTISTA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–9910. RUSSEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 344 Ark. xxii.

No. 00–9912. HAVEN *v.* SCHUETTE ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–9913. INGLE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–9914. GREEN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–9916. GALINDO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–9918. GONZALEZ ET VIR *v.* CITY OF BAKERSFIELD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 428.

No. 00–9920. GRIFFIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 767 So. 2d 456.

No. 00–9925. HITCH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–9928. FABRE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–9929. HELMS *v.* RUMER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 412.

No. 00–9932. INGRAHAM *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 00–9933. GIBBS *v.* FOSTER, GOVERNOR OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 232 F. 3d 209.

No. 00–9934. GIBBS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 00–9935. HUGHES *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 674.

No. 00–9937. COTTON *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–9941. YONTER *v.* QUEST ENGINEERING DEVELOPMENT CORP. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 772 So. 2d 872.

No. 00–9943. ALLAH, AKA THOMAS *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–9944. TURNER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 340, 541 S. E. 2d 641.

No. 00–9946. MARIONEAUX *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 00–9949. GROOMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 50, 540 S. E. 2d 713.

No. 00–9951. MATIAS *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 9.

No. 00–9952. BENNINGS *v.* KEARNEY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 2 Fed. Appx. 218.

No. 00–9959. MEYER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 92, 540 S. E. 2d 1.

No. 00–9960. JONES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 231, 539 S. E. 2d 154.

No. 00–9965. SANDERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–9966. STINSON *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–9977. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 316 Ill. App. 3d 1308, 779 N. E. 2d 530.

No. 00–9978. JANNEH *v.* GRIFFEN ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–9986. MANGOLD *v.* ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT. C. A. 8th Cir. Certiorari denied.

No. 00–9988. MANUEL SOLIS *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 219 F. 3d 922.

No. 00–9991. MAYO *v.* GARRAGHTY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 888.

No. 00–9993. PACK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS (two judgments). C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 666 (first judgment); 6 Fed. Appx. 213 (second judgment).

No. 00–9994. DONAGHE *v.* GALAZA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 338.

No. 00–9996. DAVIS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 1, 539 S. E. 2d 243.

No. 00–9997. YBARRA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 00–10001. THOMAS *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10002. TAYLOR *v.* HAWAII DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10004. HERRING *v.* KEENAN. C. A. 10th Cir. Certiorari denied. Reported below: 218 F. 3d 1171.

No. 00–10008. HARDY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 122, 540 S. E. 2d 334.

No. 00–10010. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10011. KING *v.* LAPPIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10015. HECTOR *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–10025. ANDREWS *v.* DAW. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 83.

No. 00–10032. CUEVAS *v.* CHRANS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 528.

No. 00–10036. LORD *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10037. NARY *v.* HENNESSEY, SHERIFF. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 430.

No. 00–10039. MERRIWEATHER *v.* DELOACH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10047. HATCHER ET AL. *v.* UNITED STATES; and
No. 00–10274. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 237 F. 3d 827.

No. 00–10049. VANN *v.* MCCULLOUGH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10050. WILLIAMS *v.* CITY OF COLORADO SPRINGS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 939.

No. 00–10051. BOWERSOCK *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10052. MITCHELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10054. WELLS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 00–10055. MANUEL ROMERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–10056. RAMIREZ *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10058. FILES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 887.

No. 00–10062. ANDREWS *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10063. MAGHE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–10070. PETWAY *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1184.

No. 00–10072. HANDS *v.* UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 00–10074. NEWSOME *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 786 So. 2d 579.

No. 00–10077. TURGEON *v.* WEST VIRGINIA LAWYER DISCIPLINARY BOARD. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 210 W. Va. 181, 557 S. E. 2d 235.

No. 00–10078. HOULE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 00–10079. GRAY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10080. HILL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10082. DAVIS *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 244, 539 S. E. 2d 129.

No. 00–10083. ERVIN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 40 S. W. 3d 508.

No. 00–10084. BIRKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 738.

No. 00–10092. MACK *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10094. ECKLES *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10095. CLAY *v.* JACKSON, SHERIFF, WILKINSON COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 247 F. 3d 240.

No. 00–10096. DOYLE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10097. CHOICE *v.* DAVIS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 153.

No. 00–10098. CAMPOS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 00–10099. EPPERSON *v.* BUTLER. Ct. App. Mich. Certiorari denied.

No. 00–10100. DUNCAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 116 Nev. 1369, 62 P. 3d 1153.

No. 00–10106. RANSOM *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–10120. PETERS *v.* CALHOUN COUNTY COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 748.

No. 00–10121. MOORE *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10123. STEVENS *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10126. CHARGUALAF *v.* TERRITORY OF GUAM. C. A. 9th Cir. Certiorari denied.

No. 00–10128. SKIPPER *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 414.

No. 00–10131. CRAFT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10132. PETERSON *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 00–10133. PUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–10134. CHOICE *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 253.

No. 00–10135. JAMES *v.* ATHERTON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 389.

No. 00–10136. DEVILA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 216 F. 3d 1009.

No. 00–10138. BUCHANAN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied.

No. 00–10140. STEINMAN *v.* 319 WEST 48TH STREET REALTY CORP. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 276 App. Div. 2d 355, 715 N. Y. S. 2d 1.

No. 00–10142. SMITH *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 700.

No. 00–10146. ULLRICH *v.* SNIDER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 682.

No. 00–10148. NNANNA *v.* KING. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 675.

No. 00–10152. SALAZER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 245 F. 3d 790.

No. 00–10153. PEOPLES *v.* ESTATE OF WEAVER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1151.

No. 00–10154. BURR *v.* SNIDER, SHERIFF, MORTON COUNTY, NORTH DAKOTA. C. A. 8th Cir. Certiorari denied. Reported below: 234 F. 3d 1052.

No. 00–10156. PADILLA *v.* CAMBRA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10157. STEVENS *v.* FORT WORTH POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10163. TALOUZI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 671.

No. 00–10164. MENDEZ *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10166. SCHILLING *v.* MADDOCK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10167. RIGGS *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 525.

No. 00–10169. TAYLOR *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 781 So. 2d 1205.

No. 00–10171. COATS *v.* GLAZIER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10172. DAVIS *v.* WALTERS, SUPERINTENDENT, STATE REGIONAL CORRECTIONAL FACILITY AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10173. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–10174. JOHNSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 412.

No. 00–10175. EVERIDGE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–10176. EVICCI *v.* MALONEY, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–10179. RIVERA *v.* PARTIDA ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10180. BURTON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 00–10181. SANTOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1345.

No. 00–10182. ORTA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 888.

No. 00–10184. JACKSON *v.* MOSCICKI ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–10185. LOUIS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–10187. ARMSTRONG *v.* ARTEAGA. C. A. 9th Cir. Certiorari denied.

No. 00–10189. BROWN *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 00–10199. FOGGY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 00–10200. GREEN *v.* SOUTH CAROLINA. Ct. Common Pleas of Orangeburg County, S. C. Certiorari denied.

No. 00–10201. GLOVER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10202. HUNTER *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10207. SANDERS *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10208. REZEY *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 4 Fed. Appx. 92.

No. 00–10211. COBOS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 420.

No. 00–10212. BROOKS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 820 So. 2d 172.

No. 00–10214. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10215. STATEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 24 Cal. 4th 434, 11 P. 3d 968.

No. 00–10216. OLONA *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 682.

No. 00–10218. ALVARO-MONTEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 741.

No. 00–10219. HOKE *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–10224. WILLIAMS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 772 So. 2d 120.

No. 00–10227. WILLIAMS *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1341.

No. 00–10229. DITTON *v.* MORRISON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–10230. BURNS *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 739.

No. 00–10233. BRISCOE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10234. BROCK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10235. WILLIAMS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 278 App. Div. 2d 348, 718 N. Y. S. 2d 198.

No. 00–10236. FORD *v.* NEVADA PRISON DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10239. PLUMMER *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10240. ARRINGTON *v.* SAMFORD UNIVERSITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 1077.

No. 00–10245. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 284.

No. 00–10251. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 240 F. 3d 1245.

No. 00–10253. SANDOVAL *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 241 F. 3d 765.

No. 00–10255. PAREDES-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 484.

No. 00–10257. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 391.

No. 00–10258. LOPEZ-RUIZ *v.* UNITED STATES; AGUIRRE-VARGAS *v.* UNITED STATES; ALCANTAR-MURILLO, AKA ALCANTAR-MORIO *v.* UNITED STATES (Reported below: 8 Fed. Appx. 704); ALEXANDER, AKA ALEXANDER-ORTIZ *v.* UNITED STATES (15 Fed. Appx. 404); CARRIZOSA-HERNANDEZ *v.* UNITED STATES (8 Fed. Appx. 712); CISNEROS-VALDEZ *v.* UNITED STATES (8 Fed. Appx. 710); CRUZ-ORTIZ, AKA ANTONIO-GARCIA, AKA CRUZ-ORTIZ *v.* UNITED STATES (7 Fed. Appx. 592); ESCOBAR-PEREZ *v.* UNITED STATES (8 Fed. Appx. 709); GARCIA *v.* UNITED STATES (8 Fed. Appx. 706); GUERRERO-ARIAS *v.* UNITED STATES; VILLA JIMENEZ *v.* UNITED STATES (8 Fed. Appx. 671); JUAREZ-TAFOYA *v.* UNITED STATES (7 Fed. Appx. 599); MAGANA-OJEDA *v.*

UNITED STATES (8 Fed. Appx. 701); MARTINEZ-HERNANDEZ, AKA CRUZ MARTINEZ *v.* UNITED STATES (8 Fed. Appx. 619); MEDINA-ARIAS, AKA PERES *v.* UNITED STATES (7 Fed. Appx. 670); MENDOZA-ESTRADA *v.* UNITED STATES; MENDOZA-SANDOVAL *v.* UNITED STATES (10 Fed. Appx. 443); MEZA-CASILLAS *v.* UNITED STATES (15 Fed. Appx. 408); MORENO-GALINDO *v.* UNITED STATES (7 Fed. Appx. 594); MUNOZ-HERNANDEZ *v.* UNITED STATES (6 Fed. Appx. 639); MURILLO-CONTRERAS *v.* UNITED STATES (8 Fed. Appx. 712); OBREGON-SEGURA *v.* UNITED STATES (7 Fed. Appx. 674); PALACIOS-LIZARRAGA *v.* UNITED STATES (8 Fed. Appx. 704); PEREZ-ESPINO, AKA ESPINO PEREZ *v.* UNITED STATES (5 Fed. Appx. 660); PORRAS-RODRIGUEZ, AKA PORRAS *v.* UNITED STATES (8 Fed. Appx. 702); PULIDO-NORIEGA *v.* UNITED STATES (8 Fed. Appx. 708); QUINONES-GARCIA *v.* UNITED STATES (7 Fed. Appx. 593); RAMIREZ-MEJIA *v.* UNITED STATES (6 Fed. Appx. 596); RIOS-ESCOBAR *v.* UNITED STATES; RIVAS-AYALA *v.* UNITED STATES (8 Fed. Appx. 703); RODRIGUEZ-LLAMAS *v.* UNITED STATES (8 Fed. Appx. 713); SAAVEDRA-MARTINEZ *v.* UNITED STATES (8 Fed. Appx. 716); SALGADO-PITA *v.* UNITED STATES (8 Fed. Appx. 707); SANCHEZ-RODRIGUEZ, AKA SANCHEZ-MATA *v.* UNITED STATES (8 Fed. Appx. 701); SANDOVAL-SANCHEZ, AKA DIAZ-SANCHEZ *v.* UNITED STATES; TELLEZ-VIERA *v.* UNITED STATES; TORRES TONTLE *v.* UNITED STATES; VALENCIA-GONZALEZ *v.* UNITED STATES (8 Fed. Appx. 716); VERGEL-GARCIA, AKA BERTEL GARCIA *v.* UNITED STATES (8 Fed. Appx. 705); VILLEGAS-LARA *v.* UNITED STATES (11 Fed. Appx. 898); YEDRA *v.* UNITED STATES (5 Fed. Appx. 706); ZAMORA-RIVERA *v.* UNITED STATES (8 Fed. Appx. 715); ZAMUDIO-OROZCO *v.* UNITED STATES (17 Fed. Appx. 509); SANCHEZ-SANCHEZ *v.* UNITED STATES (242 F. 3d 385); and VASQUEZ-DEL REAL *v.* UNITED STATES (242 F. 3d 384). C. A. 9th Cir. Certiorari denied.

No. 00–10259. KRAUSE *v.* NEMENZ ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10261. LAWS *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10262. BRASWELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10263. BROOMFIELD *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–10264. JAMES *v.* MANN. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1268.

No. 00–10265. JOHNSON *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 248 F. 3d 1171.

No. 00–10266. MARVIN *v.* HERBERT, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–10267. LIPPERT *v.* MECHLING, SUPERINTENDENT, WAYNESBURG CORRECTIONAL INSTITUTION. Sup. Ct. Pa. Certiorari denied.

No. 00–10270. STITH *v.* BUSCH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 521.

No. 00–10271. JARAMILLO *v.* PINKERTON ET AL. Ct. App. N. M. Certiorari denied.

No. 00–10275. BROWN *v.* SCHOMIG, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10277. MORRISON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10278. PRICE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10279. PONDS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–10280. ABDULLAH *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 886.

No. 00–10281. MOORE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–10283. WEST *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 793 So. 2d 870.

No. 00–10284. ALSTON *v.* BUMGARNER, ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 360.

No. 00–10286. AL-MOSAWI *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 387.

No. 00–10288. BATES *v.* SULLIVAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 425.

No. 00–10291. CALMESE *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 669.

No. 00–10293. BOLEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 781 So. 2d 1090.

No. 00–10294. BROWN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 00–10295. MCGRUDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 00–10296. PARRISH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 746.

No. 00–10300. GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–10301. IL SOO CHO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 00–10302. SANTO BATISTA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 239 F. 3d 16.

No. 00–10304. BROWN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10306. ANTOINE *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10307. BASILE *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10309. DAVIS *v.* PRICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH. C. A. 3d Cir. Certiorari denied. Reported below: 250 F. 3d 735.

No. 00–10311. CASTILLO ARBOLELLA *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10312. BERES *v.* FAIRMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10313. DAUVEN ET UX. *v.* ST. VINCENT HOSPITAL AND MEDICAL CENTER ET AL. Ct. App. Ore. Certiorari denied. Reported below: 169 Ore. App. 587, 9 P. 3d 162.

No. 00–10314. ECHAVARRIA-OLARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 548.

No. 00–10315. COLEMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–10316. PALMER *v.* TAYLOR, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 666.

No. 00–10318. JOHNSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–10319. BOYD *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–10320. ALMONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 746.

No. 00–10321. BOYD *v.* MUELLER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10325. JOELSON *v.* O'KEEFE, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–10326. MATTSON *v.* O'KEEFE, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–10327. CAPRICE, AKA BUCKHALTON *v.* O'KEEFE, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–10328. MCKENZIE, AKA KNIGHT, AKA ASKEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 208 F. 3d 211.

No. 00–10329. CHANDLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 683.

No. 00–10331. HINES *v.* MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 239 F. 3d 366.

No. 00–10333. WILLIAMS *v.* SCOTT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 684.

No. 00–10334. WASHINGTON *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10335. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–10337. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 766 A. 2d 50.

No. 00–10338. L. T. *v.* COLORADO ET AL. Ct. App. Colo. Certiorari denied.

No. 00–10339. THOMPSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 43 S. W. 3d 516.

No. 00–10340. PATTERSON *v.* O'KEEFE, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–10341. DUVALL *v.* O'KEEFE, COMMISSIONER OF HUMAN SERVICES OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 00–10342. WONGUS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 254 F. 3d 1079.

No. 00–10343. GREEN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 00–10344. FISHER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10346. CAMPBELL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–10347. HOWELL, AKA HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–10348. EDWARDS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10349. DOUGLAS *v.* CATERPILLAR, INC., ET AL. (two judgments). C. A. 7th Cir. Certiorari denied.

No. 00–10350. FAGARASAN *v.* UNIVERSITY OF CALIFORNIA AT SAN DIEGO. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 381.

No. 00–10351. OPONG-MENSAH *v.* BASSOFF ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 00–10353. POTTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 160.

No. 00–10354. ASHLEY *v.* BRAXTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 173.

No. 00–10357. DOUGLAS *v.* UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. C. A. 8th Cir. Certiorari denied.

No. 00–10358. DERROW *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10359. MASON *v.* BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA ET AL. Ct. Civ. App. Okla. Certiorari denied. Reported below: 23 P. 3d 964.

No. 00–10360. HADDOCK *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10361. BROWN *v.* CONROY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 355.

No. 00–10362. ALLEN *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 00–10363. ADAMS *v.* CITY OF DEADWOOD. Sup. Ct. S. D. Certiorari denied. Reported below: 624 N. W. 2d 358.

No. 00–10365. PATTERSON ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 241 F. 3d 912.

No. 00–10366. NORTON *v.* SCHRIRO ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–10368. CHERRY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 86 Cal. App. 4th 1296, 104 Cal. Rptr. 2d 131.

No. 00–10369. CARTER *v.* JOHNSTON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 374.

No. 00–10370. CARLSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 550.

No. 00–10371. AMUTALLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 1161.

No. 00–10372. BOLDWARE *v.* GOMEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 386.

No. 00–10374. ETTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–10375. JOHNSON *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10376. KENNELL *v.* ALLEN. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 530.

No. 00–10377. WILLIAMS *v.* NBD BANK. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 473.

No. 00–10378. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 00–10379. WHITEFORD *v.* GOLDSTEIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 250 F. 3d 737.

No. 00–10380. BRIDGETTE *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 608.

No. 00–10381. BUSTILLOS-MUNOZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 235 F. 3d 505.

No. 00–10382. SMITH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10383. SCHIEBLE *v.* DORCHESTER COUNTY. Sup. Ct. S. C. Certiorari denied.

No. 00–10385. ROLLINS *v.* RAY ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10386. BRITTON *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1133.

No. 00–10387. CAMBRELEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 30.

No. 00–10388. ROUSSEAU *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 00–10389. MADRID SALAZER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 38 S. W. 3d 141.

No. 00–10392. NOWIK *v.* NORTH DAKOTA. Ct. App. N. D. Certiorari denied. Reported below: 624 N. W. 2d 352.

No. 00–10393. PASCHAL *v.* JOHNSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10394. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 636.

No. 00–10395. RODRIGUEZ-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–10397. JOHNSON *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 755.

No. 00–10399. JORDAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–10400. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 635.

No. 00–10401. CANDIDO POLANCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 371.

No. 00–10402. POTTER *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1151.

No. 00–10403. BOONE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 375.

No. 00–10405. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 634.

No. 00–10406. MEADE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 757 A. 2d 994.

No. 00–10407. JACKSON *v.* MECKLENBURG COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1352.

No. 00–10408. SAWYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 665.

No. 00–10409. CARINI *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 278 App. Div. 2d 504, 718 N. Y. S. 2d 857.

No. 00–10410. SHEPARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1295.

No. 00–10411. ROBINSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 241 F. 3d 115.

No. 00–10412. RODGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 236 F. 3d 610.

No. 00–10413. ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 00–10414. PARKER *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10415. LLOYD *v.* GENERAL MOTORS HOURLY-RATE EMPLOYEES PENSION PLAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 789.

No. 00–10416. SHERROD *v.* BRILEY, SUPERINTENDENT, ILLINOIS YOUTH CENTER, JOLIET. C. A. 7th Cir. Certiorari denied.

No. 00–10417. JOHNSON *v.* CIRCUIT CITY STORES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 17.

No. 00–10418. PETERSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–10419. VERMILLION *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 00–10420. WATTS *v.* HUMPHREY, JUDGE, CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 344 Ark. xxiii.

No. 00–10421. THOMPSON *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 234 F. 3d 1270.

No. 00–10422. YON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–10423. ZISKIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–10424. WOODWARD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–10425. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 790 So. 2d 1105.

No. 00–10426. LOPEZ-RAMIREZ *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10427. MORALES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 34, 18 P. 3d 11.

No. 00–10428. O'KEEFE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 385.

No. 00–10429. MICHAEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 00–10430. JOHNSON *v.* KING. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 665.

No. 00–10432. WHITE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 779 So. 2d 275.

No. 00–10433. THRASH *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–10434. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 00–10435. BOLDEN *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–10436. MONTGOMERY *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 00–10437. DUNCAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 940.

No. 00–10438. GIEBEL *v.* SYLVESTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 622.

No. 00–10439. HARPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 575.

No. 00–10440. HUDSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 117, 745 N. E. 2d 1246.

No. 00–10441. GAMBLE *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 00–10442. GREENE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 343 Ark. 526, 37 S. W. 3d 579.

No. 00–10443. FERNANDEZ-MONTOYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 163.

No. 00–10444. HAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 231 F. 3d 630.

No. 00–10446. HINES *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–10447. TAVERAS BATISTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–10448. WILLIAMS *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 1076.

No. 00–10449. TIMMENDEQUAS *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 161 N. J. 515, 737 A. 2d 55.

No. 00–10450. DURMER *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–10451. BROWN *v.* CITY OF PHILADELPHIA. C. A. 3d Cir. Certiorari denied.

No. 00–10452. DICKERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 493.

No. 00–10453. PALOMARES-MUNOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 709.

No. 00–10454. ARREOLA-TRASVINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 590.

No. 00–10455. ZELLIS *v.* MASTERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 899.

No. 00–10457. SIMS *v.* MADDOCK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 767.

No. 00–10459. KINGSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 241 F. 3d 828.

No. 00–10460. JIMENEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–10461. PARSONS *v.* GARRAGHTY, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 00–10462. PUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 157.

No. 00–10463. JENKINS *v.* DUKES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1149.

No. 00–10464. SAVAGE *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 578.

No. 00–10465. WILSON *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 764 So. 2d 813.

No. 00–10466. FOSTER *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10467. ROCHELL *v.* LACY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10468. STARKS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10469. REESE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–10470. BONDURANT *v.* COLORADO GENERAL ASSEMBLY ET AL. Sup. Ct. Colo. Certiorari denied.

No. 00–10471. MATHISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–10472. LEVY *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1158.

No. 00–10473. BIRKHOLZ *v.* SIXTEENTH JUDICIAL COURT OF MONTANA, CUSTER COUNTY. Sup. Ct. Mont. Certiorari denied. Reported below: 304 Mont. 401, 26 P. 3d 751.

No. 00–10474. MULAZIM *v.* CHAVEZ, CLASSIFICATION DIRECTOR, CORRECTIONAL FACILITY PROGRAM, ET AL. C. A. 6th Cir. Certiorari denied.

No. 00–10475. KASKA *v.* HARRELSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 247.

No. 00–10476. LICHTENBERG, AKA LICHTENBERG-COOKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 416.

No. 00–10477. MONTES-MANZANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 701.

No. 00–10478. ADAMS *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10480. MULLER *v.* SENKOWSKI, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 6 Fed. Appx. 58.

No. 00–10481. DAVIS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 235 F. 3d 584.

No. 00–10482. REDMAN *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 363 Md. 298, 768 A. 2d 656.

No. 00–10483. BROWN *v.* GUNDY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10484. AKBAR *v.* WALSIN. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 173.

No. 00–10486. ROBINSON *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1159.

No. 00–10488. ALLEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10489. VANSKIKE *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10490. VOLLMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 573.

No. 00–10491. TOKAR *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–10492. JONES *v.* DUSING ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1134.

No. 00–10493. KEELER, AKA EL-MUHAMMAD *v.* REESE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 00–10495. VON MOOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 677.

No. 00–10496. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 385.

No. 00–10497. KENNEDY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–10498. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 F. 3d 716.

No. 00–10499. VON MESHACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 225 F. 3d 556 and 244 F. 3d 367.

No. 00–10500. PICCARRETO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 00–10501. TIDIK *v.* MICHIGAN COURT OF APPEALS JUDGES. C. A. 6th Cir. Certiorari denied.

No. 00–10502. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 439.

No. 00–10503. SANDERS *v.* COOPER, ATTORNEY GENERAL OF NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 679.

No. 00–10504. MANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 245.

No. 00–10505. CARDENAS *v.* LYTLE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 679.

No. 00–10506. SHELTON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10507. RODRIGUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10508. SALAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 00–10509. ROGERS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 493.

No. 00–10510. BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 182 F. 3d 935.

No. 00–10511. CALVIN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 101 Wash. App. 1055.

No. 00–10512. MONTANEZ *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10514. ALFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 00–10515. ADAMS *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied.

No. 00–10516. ADOLFO LABUNOG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–10517. LOGAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 00–10518. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 242 F. 3d 707.

No. 00–10519. MACK *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 00–10520. KREUTZER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 231 F. 3d 460.

No. 00–10521. LOGAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 244 F. 3d 553.

No. 00–10522. MORGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1180.

No. 00–10523. CASTILLO-REYNA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–10524. DAMMONS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 00–10525. BOTHWELL *v.* GENERAL MOTORS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 239 F. 3d 369.

No. 00–10527. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 00–10528. SPENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 245 and 246.

No. 00–10529. SUESCUN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 1284.

No. 00–10531. TYUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 440.

No. 00–10533. LEWIS *v.* DEES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10534. WALDEN *v.* RADIGAN. Ct. App. S. C. Certiorari denied.

No. 00–10535. SEARCY *v.* DAVENPORT ET AL. Ct. App. Ark. Certiorari denied. Reported below: 73 Ark. App. xxi.

No. 00–10536. ABADIE *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 744 So. 2d 240.

No. 00–10537. BANKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 158.

No. 00–10538. ROMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10539. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–10540. YOUNG *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10541. RAY *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10542. JAMES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–10543. BURTON *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10544. ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 00–10545. ADIO-MOWO *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 00–10546. POULACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 236 F. 3d 932.

No. 00–10547. WILLIAMS *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–10548. JUAREZ-VILLALON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 00–10549. CHILDERS *v.* LAZAROFF, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10550. COLLIER *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 121.

No. 00–10551. BROOKS *v.* BATTLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10552. AMAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 157.

No. 00–10553. MOXLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 95.

No. 00–10554. CASEY *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–10555. CARTER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 233 F. 3d 575.

No. 00–10556. DITTON ET AL. *v.* MORRISON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–10557. HOLLOMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 416.

No. 00–10559. BRACETTY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 787 So. 2d 866.

No. 00–10560. BRIZUELA-PAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 00–10561. ANDREWS *v.* CORTEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 221 F. 3d 1347.

No. 00–10562. FARMER, AKA KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 00–10563. INFINITY *v.* JONES ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10564. HOLLOMAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 00–10566. SALCEDO FREGOSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 677.

No. 00–10567. GIBSON *v.* MINETA, SECRETARY OF TRANSPORTATION. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 381.

No. 00–10568. GIACUMBO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 225 F. 3d 647.

No. 00–10569. HAMMETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 236 F. 3d 1054.

No. 00–10570. HOGAN *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10571. HILL *v.* ELTING ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 321.

No. 00–10572. FAUGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 160.

No. 00–10573. GUANLAO *v.* LOONEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 796.

No. 00–10574. MCINTOSH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10575. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 439.

No. 00–10576. WHEELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 439.

No. 00–10577. WILLOYA *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 00–10578. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 436.

No. 00–10579. SIERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 436.

No. 00–10580. BAPTISTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 235 F. 3d 1345.

No. 00–10581. BONDS *v.* RODRIQUEZ ET AL. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 00–10583. RIVERA *v.* UNITED STATES; and

No. 01–5673. GUZMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 45.

No. 00–10584. MARCELLO *v.* MAINE DEPARTMENT OF HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 00–10585. GUTIERREZ *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10586. GARRISON *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 680.

No. 00–10587. TAVIZON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 722.

No. 00–10588. M. A. C. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 761 A. 2d 32.

No. 00–10589. DANTAS *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 1st Cir. Certiorari denied.

No. 00–10590. SHANKS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 777 So. 2d 474.

No. 00–10593. AYER ET AL. *v.* CAFFEY ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 00–10594. BUN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–10595. WILLIAMSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 434.

No. 00–10596. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1154.

No. 00–10597. DUNCAN *v.* MANVILLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10598. CLINE *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 00–10599. D. B. *v.* ZENK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10600. DASINGER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10601. SERRANO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10602. MOORE *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 666.

No. 00–10603. STEWART *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1154.

No. 00–10605. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 239 F. 3d 722.

No. 00–10606. BRIGGMAN *v.* FRANK, DEPUTY SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON. C. A. 3d Cir. Certiorari denied.

No. 00–10608. TINSLEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–10609. TORRES-MEZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 00–10610. JOHNSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–10611. SINGLETON *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 667.

No. 00–10612. REVERE *v.* WEST VIRGINIA. Cir. Ct. Ohio County, W. Va. Certiorari denied.

No. 00–10613. ANDERSON *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10614. MACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 246.

No. 00–10615. ELFAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 650.

No. 00–10616. DEBARDELEBEN *v.* BLACK, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND,

ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 664.

No. 00–10617. DEY *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 84 Cal. App. 4th 1318, 101 Cal. Rptr. 2d 581.

No. 00–10619. DUKES *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 4 Fed. Appx. 886.

No. 00–10620. CHAMBERS *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10621. CLARK *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 463 Mich. 459, 619 N. W. 2d 538.

No. 00–10623. MARTINEZ-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 00–10624. LEDEZMAN-AMEZQUITA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 677.

No. 00–10625. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 157.

No. 00–10626. SALINAS-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 00–10628. THEOPHANOUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 4 Fed. Appx. 18.

No. 00–10629. WILLIAMS *v.* MONTGOMERY COUNTY MUNICIPAL COURT. C. A. 11th Cir. Certiorari denied.

No. 00–10630. VILLAFRANCA-CABRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 00–10632. HUBBARD *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 742 N. E. 2d 919.

No. 00–10633. GARZA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 00–10634. GUEVARRA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 00–10635. AVERY *v.* LARSEN, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 00–10636. EDMONDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 434.

No. 00–10637. DUBUC *v.* BOONE, WARDEN, ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 00–10638. CAMPBELL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10639. COTTON *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10640. NORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 157.

No. 00–10641. MONTANEZ *v.* COTTON, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 00–10642. PLATT *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 242, 19 P. 3d 412.

No. 00–10643. HERRSCHAFT *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 248 F. 3d 1130.

No. 00–10644. HASAN *v.* HOWERTON, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 00–10645. HOUSE *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10646. GREEN *v.* DEWALT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 230 F. 3d 1352.

No. 00–10647. GREEN *v.* KINGSTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10648. HEREFORD *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10649. GASTON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 00–10651. HAM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–10653. GRIST *v.* UNITED STATES PAROLE COMMISSION. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 724.

No. 00–10654. FULLER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–10655. GOWING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–10656. IWEGBU *v.* PAYNE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 135.

No. 00–10657. HAYS *v.* NEWSOM ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 270.

No. 00–10658. HOUSLEY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 00–10659. FULLER *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 00–10660. GREENE *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10661. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 377.

No. 00–10662. FERQUERON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 00–10663. BALDYGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 233 F. 3d 674.

No. 00–10665. GUANIPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 162.

No. 00–10667. INFANTE *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 00–10668. PATTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 245.

No. 00–10669. BERNAL MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 752.

No. 00–10670. QUESADA-MOSQUERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 243 F. 3d 685.

No. 00–10671. FACUNDO *v.* HOLDER, WARDEN, ET AL.; FACUNDO *v.* UNITED STATES PAROLE COMMISSION; and FACUNDO *v.* DRUG ENFORCEMENT ADMINISTRATIVE AGENCY. C. A. 2d Cir. Certiorari denied.

No. 00–10672. DIJULIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 F. 3d 404.

No. 00–10673. ANDRESON *v.* WEBER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–10674. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 245.

No. 00–10675. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 795 So. 2d 788.

No. 00–10676. SIMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–10677. MCCOY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 242 F. 3d 399.

No. 00–10678. POLSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10679. ARIAS-CASTRO, AKA DIAZ-GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 443.

No. 00–10680. AVERY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 886.

No. 00–10681. SUAREZ-MORALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 683.

No. 00–10682. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 00–10685. PARSONS *v.* GARRAGHTY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 131.

No. 00–10686. WHITLEY *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 761 So. 2d 825.

No. 00–10687. WOODS *v.* INDUSTRIAL COMMISSION OF ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 00–10688. TAYLOR *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10689. WALKER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10690. SCOTT *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 194 Ill. 2d 268, 742 N. E. 2d 287.

No. 00–10691. ROSS, AKA ROSS-EL *v.* JOHNSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10692. ROMNEY *v.* KOOIMAN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10693. MITCHELL *v.* GARRETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 135.

No. 00–10696. MONSON *v.* BLODGETT, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 548.

No. 00–10697. RODRIGUEZ PALAFOX *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10698. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 435.

No. 00–10699. FRANCISCO MEDINA *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 695.

No. 00–10700. AUGARTEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–10702. SEEHAUSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10703. BRASWELL *v.* ROBERSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 775.

No. 00–10705. MILLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 59.

No. 00–10706. ARRINGTON *v.* STEIN MART, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1180.

No. 00–10707. BRANIGAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 249 F. 3d 584.

No. 00–10708. DOPP *v.* DOPP. Ct. Civ. App. Okla. Certiorari denied.

No. 00–10709. JONES *v.* PROVENA ST. JOSEPH MEDICAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 234 F. 3d 1273.

No. 00–10711. WILSON *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 00–10712. WEBER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–10713. TUCKER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 140 N. C. App. 790, 541 S. E. 2d 238.

No. 00–10714. CANTU *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10715. NORTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 416.

No. 00–10717. NODAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 441.

No. 00–10718. CHANES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 87 Cal. App. 4th 239, 104 Cal. Rptr. 2d 470.

No. 00–10719. CHAPPELL *v.* COOPER, ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 411.

No. 00–10720. DAVIES *v.* IMMIGRATION AND NATURALIZATION SERVICE, ATLANTA DIVISION. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1178.

No. 00–10721. COSTIGAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 18 Fed. Appx. 2.

No. 00–10723. GARCIA BERTADILLO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10724. PASSARELLI *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 00–10725. ROGERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 438.

No. 00–10726. BURGESS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10727. BELL *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10729. DITTON ET AL. *v.* CITY OF ALEXANDRIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 664.

No. 00–10731. DODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 229 F. 3d 1144.

No. 00–10732. GHARIBIAN *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 00–10733. NODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–10734. BARAJAS-SERRATO *v.* UNITED STATES; ESPINOZA-NUNEZ *v.* UNITED STATES; GARCIA-LORENZO, AKA GARCIA *v.* UNITED STATES; RENTERIA-ALMODOVAR, AKA FERNANDEZ-PEREZ *v.* UNITED STATES; and ZEDILLO-CAMARILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 575 (first and fifth judgments); 7 Fed. Appx. 652 (fourth judgment).

No. 00–10735. PALMER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 F. 3d 405.

No. 00–10736. RONDEAU *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 00–10737. BROADNAX *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 663.

No. 00–10738. HANSEN *v.* DAVIS, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–10739. GALLE *v.* INGALLS SHIPBUILDING, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 214 F. 3d 1350.

No. 00–10740. MCCLAIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1177.

No. 00–10741. MAAS *v.* CALIFORNIA (two judgments). Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–10742. IBANEZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 428.

No. 00–10743. BAUMER *v.* SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 00–10744. WATSON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10745. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 786.

No. 00–10746. CORVO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 245.

No. 00–10750. ATWELL *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 738 N. E. 2d 332.

No. 00–10751. RAIBLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 1069.

No. 00–10752. LOPEZ-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 00–10753. LEWIS *v.* ZERO BREESE ROOFING CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 369.

No. 00–10754. MUNOZ *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–10756. WIWO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1361.

No. 00–10757. ZAPATA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 00–10758. CASTILLO-ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 00–10759. SHAFFMASTER *v.* CLINTON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 298.

No. 00–10762. DIAKITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1153.

No. 00–10763. ARTEGA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 94.

No. 00–10764. ASHANTI *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10765. BOATWRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 141.

No. 00–10766. AUSTIN *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 695.

No. 00–10767. ESPINOSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 00–10768. CHRISTOPHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 F. 3d 1191.

No. 00–10770. SILVA-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 436.

No. 00–10771. SOBIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10772. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 1162.

No. 00–10773. TELLEZ VERDIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 1174.

No. 00–10774. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 00–10775. WALKER *v.* KALMANOV. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1142.

No. 00–10776. JAMESWHITE *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 00–10777. ZINN *v.* SPARKMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10778. JARAMILLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 00–10779. BUDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 153.

No. 00–10780. CORPUS-GONZALEZ *v.* UNITED STATES; ELIZONDO-ESTRADA *v.* UNITED STATES; ACOSTA-CANALES *v.* UNITED STATES; DOMINGUEZ-ALARCON *v.* UNITED STATES; NAHUN-BULNES *v.* UNITED STATES; MURO-VILLA *v.* UNITED STATES; and LOPEZ-SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703 (seventh judgment) and 704 (first through sixth judgments).

No. 00–10781. CHERRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 781 So. 2d 1040.

No. 00–10782. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 190 F. 3d 1247.

No. 00–10783. MARTINEZ-CUADROS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 13.

No. 00–10784. JUDGE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 00–10785. CUMMINGS *v.* ABRAMSON ET AL.; and CUMMINGS *v.* GIULIANI, MAYOR OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 00–10786. STARKES *v.* FLORIDA BOARD OF REGENTS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 237 F. 3d 635.

No. 00–10788. VIDRIO-ALEMAN *v.* UNITED STATES; PACHECO-RAMOS *v.* UNITED STATES; DE LA TORRE-CHAVEZ *v.* UNITED STATES; MURO-INCLAN *v.* UNITED STATES; CAMPOS-CHAVEZ *v.* UNITED STATES; RODRIGUEZ-JIMENEZ *v.* UNITED STATES; and RODRIGUEZ-COSIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 938 (second judgment); 10 Fed. Appx. 598 (third judgment); 249 F. 3d 1180 (fourth judgment); 10 Fed. Appx. 544 (fifth judgment); 10 Fed. Appx. 597 (sixth judgment); 10 Fed. Appx. 526 (seventh judgment).

No. 00–10789. MCCONICO *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 821 So. 2d 1029.

No. 00–10790. NEUHAUSSER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 241 F. 3d 460.

No. 00–10791. WASHINGTON *v.* COURT OF CRIMINAL APPEALS OF OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 00–10792. WASHINGTON *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10793. BRANNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 144.

No. 00–10794. CURRY *v.* SAN FRANCISCO NEWSPAPER AGENCY. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 428.

No. 00–10797. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 235 F. 3d 1069.

No. 00–10798. JOHNSON *v.* TUPPERWARE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 157.

No. 00–10799. LAMMERS *v.* COLUMBIA COUNTY ET AL. C. A. 7th Cir. Certiorari denied.

No. 00–10800. LANDEROS-TEJADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1355.

No. 00–10801. MIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10803. BAZZELL ET AL. *v.* PERRY, GOVERNOR OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10804. STURGIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 238 F. 3d 956.

No. 00–10805. ROGERS *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 00–10806. MCFADDEN *v.* PADULA, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 251.

No. 00–10807. KHOURI *v.* AULT, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 00–10808. CORPORAN-CUEVAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 244 F. 3d 199.

No. 00–10809. ADAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 254 F. 3d 1079.

No. 00–10812. PIERCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 00–10813. MAYE *v.* MORGAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10814. BLOM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 799.

No. 00–10815. ROMERO *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10816. MCCALL *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 785 So. 2d 486.

No. 00–10818. RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 453.

No. 00–10819. WOLFE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 245 F. 3d 257.

No. 00–10820. WILKS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 00–10821. WINER *v.* MORRISEY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10822. ESPARZA-ORNELAS *v.* UNITED STATES; SIERRA-NINO *v.* UNITED STATES; SOSA-GARCIA *v.* UNITED STATES; SOSA-VARGAS *v.* UNITED STATES; and TRUJILLO-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704 (fourth judgment) and 705 (first, second, third, and fifth judgments).

No. 00–10823. WALKER *v.* MONTCALM CENTER FOR BEHAVIORAL HEALTH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 426.

No. 00–10824. MCCRIGHT *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 00–10825. ORTIZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 00–10826. STEWART *v.* STRAUB, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 446.

No. 00–10828. MCSHEFFREY *v.* EXECUTIVE OFFICE FOR THE UNITED STATES ATTORNEYS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 13 Fed. Appx. 3.

No. 00–10830. DITTON *v.* CAPITAL ONE FINANCIAL CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 138.

No. 00–10831. KEA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10832. MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 750.

No. 00–10833. REVIERE *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 00–10834. BURLEY *v.* UNITED STATES; and

No. 01–5685. HISHAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 244 F. 3d 1208.

No. 00–10835. BRUZON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 439.

No. 00–10836. BAUMER *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10837. TIDMORE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 00–10838. WILBURN *v.* HIGHTOWER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 71.

No. 00–10839. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 379.

No. 00–10840. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 748.

No. 00–10841. TORRES *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 242 F. 3d 383.

No. 00–10842. WILSON *v.* DISTRICT OF COLUMBIA BOARD OF PAROLE ET AL. Ct. App. D. C. Certiorari denied.

No. 00–10843. TOLIVER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 00–10844. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 671.

No. 00–10845. WASSENAAR *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 00–10846. STILWELL *v.* WRAY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 230.

No. 00–10847. RUDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 131.

No. 00–10848. PEREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 71.

No. 00–10850. STABLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 140.

No. 00–10852. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1144.

No. 00–10853. NORRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 820 So. 2d 178.

No. 00–10854. SPENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 00–10855. ORTEGA-GARCIA, AKA ORTEGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 897.

No. 00–10856. HEARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 661.

No. 00–10857. HERRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1361.

No. 00–10858. GRASS *v.* IGNACIO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 777.

No. 00–10859. HINTON *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied.

No. 00–10861. HARRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1355.

No. 00–10862. RAMIREZ-GIL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 00–10865. DALY *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS. C. A. 9th Cir. Certiorari denied.

No. 00–10866. CARTER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 820 So. 2d 178.

No. 00–10867. SEDGWICK *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 00–10868. RITCH *v.* PERDUE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 667.

No. 00–10870. BURTIS *v.* ANNAN, SECRETARY GENERAL OF THE UNITED NATIONS, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 104.

No. 00–10871. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 330.

No. 00–10872. PHILLIPS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 239 F. 3d 829.

No. 00–10873. MILES *v.* BURGESS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 12 Fed. Appx. 8.

No. 00–10874. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 F. 3d 405.

No. 00–10875. AMLANI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 431.

No. 00–10876. PLACIDO ANGULO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 00–10877. ORTIZ *v.* VAUGHN ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10878. MAYABB *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 00–10879. WALLACE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 00–10880. STOVALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1355.

No. 00–10881. BLACKWOOD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 777 So. 2d 399.

No. 00–10882. BROADEN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 780 So. 2d 349.

No. 00–10883. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 00–10886. GREASHAM *v.* BOOHER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 738.

No. 00–10887. HERRING *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 783 So. 2d 259.

No. 00–10888. HUNTER *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 00–10889. HORTON *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10890. GUSS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–10892. HAMPTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 00–10893. GAGE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 00–10894. HILL *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 00–10896. MARTIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 471.

No. 00–10897. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1363.

No. 01–3. TAYLOR *v.* BECK, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 01–4. WINDSOR HOUSING FOUNDATION *v.* LITCHFIELD ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 778 So. 2d 97.

No. 01–6. MAZZEI *v.* ROCK-N-AROUND TRUCKING, INC. C. A. 7th Cir. Certiorari denied. Reported below: 246 F. 3d 956.

No. 01–7. KATO ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 630.

No. 01–9. PINCAY ET AL. *v.* ANDREWS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1106.

No. 01–10. ANTONI *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 102 Wash. App. 1037.

No. 01–11. TUTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 240 F. 3d 1292.

No. 01–12. ZAMOS *v.* ZAMOS. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–13. KOULEGEORGE *v.* ILLINOIS HUMAN RIGHTS COMMISSION ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 316 Ill. App. 3d 1079, 738 N. E. 2d 172.

No. 01–18. FLORIDA *v.* ROGERS. Sup. Ct. Fla. Certiorari denied. Reported below: 782 So. 2d 373.

No. 01–19. F/V QUALITY ONE, IN REM, ET AL. *v.* GOWEN, INC. C. A. 1st Cir. Certiorari denied. Reported below: 244 F. 3d 64.

No. 01–20. LOWE *v.* IOWA. Ct. App. Iowa. Certiorari denied.

No. 01–21. BENNETT *v.* BENNETT. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 315 Ill. App. 3d 1225, 777 N. E. 2d 1087.

No. 01–22. SUNDANCE HOMES, INC., ET AL. *v.* COUNTY OF DUPAGE ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 257, 746 N. E. 2d 254.

No. 01–23. ROYAL CARIBBEAN CRUISES, LTD. *v.* DUARTE. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 761 So. 2d 367.

No. 01–24. KENNEDY *v.* GOLDIN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. 11th Cir. Certiorari denied. Reported below: 245 F. 3d 794.

No. 01–26. SMITH *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 179, 745 N. E. 2d 1194.

No. 01–27. SULLIVAN, INDIVIDUALLY AND DBA SULLIVAN MACHINE & TOOL CO., ET AL. *v.* BILES ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 793 So. 2d 708.

No. 01–28. KELLY, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY *v.* NOBLE. C. A. 2d Cir. Certiorari denied. Reported below: 246 F. 3d 93.

No. 01–31. HOLBROOK *v.* NATIONWIDE MUTUAL INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1178.

No. 01–32. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 214.

No. 01–33. HIGHTOWER *v.* CONTINENTAL CABLEVISION OF JACKSONVILLE. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 160.

No. 01–34. SIEGEL-ROBERT, INC. *v.* SWOPE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 486.

No. 01–36. SCARCELLI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 759 A. 2d 24.

No. 01–37. EPISON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1161.

No. 01–39. CARTER *v.* RAMIREZ-PALMER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–41. AVERY *v.* HOUSTON COMMUNITY COLLEGE SYSTEM ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 700.

No. 01–42. COREY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 232 F. 3d 1166.

No. 01–43. COCHRAN, CONSERVATOR OF HUNTER *v.* TRANSGENERAL LIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 277.

No. 01–44. MUELLER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied.

No. 01–45. MAZZA *v.* BRATTON, COMMISSIONER OF NEW YORK CITY POLICE DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 36.

No. 01–47. WHITT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 541.

No. 01–48. TINSLEY *v.* WALT DISNEY CO., INC. C. A. 4th Cir. Certiorari denied.

No. 01–49. DENNIS *v.* OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 222 F. 3d 1245.

No. 01–50. MILSTEAD, ADMINISTRATOR OF THE ESTATE OF MILSTEAD, DECEASED *v.* KIBLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 243 F. 3d 157.

No. 01–51. OCHOA *v.* UNITED STATES; and
No. 01–5103. MCINTOSH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 222.

No. 01–53. NAGARAJAN *v.* SCHEICK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1150.

No. 01–54. THOMPSON *v.* DUPUIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 739.

No. 01–55. LOFTIN *v.* LOFTIN. Sup. Ct. Ala. Certiorari denied. Reported below: 821 So. 2d 251.

No. 01–57. WHITESIDES *v.* ALASKA DEPARTMENT OF PUBLIC SAFETY, DIVISION OF MOTOR VEHICLES. Sup. Ct. Alaska. Certiorari denied. Reported below: 20 P. 3d 1130.

No. 01–59. SCHRADER ET AL. *v.* BLACKWELL, OHIO SECRETARY OF STATE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 241 F. 3d 783.

No. 01–60. SNEAD *v.* METROPOLITAN PROPERTY & CASUALTY INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 237 F. 3d 1080.

No. 01–63. WOODFORD, WARDEN *v.* ODLE. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1084.

No. 01–65. HEMPFLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 740.

No. 01–66. HOWARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 249.

No. 01–68. HERSCHAFT *v.* NEW YORK CITY CAMPAIGN FINANCE BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 21.

No. 01–70. HACK ET AL. *v.* PRESIDENT AND FELLOWS OF YALE COLLEGE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 237 F. 3d 81.

No. 01–72. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS ET AL. *v.* UNITED AIRLINES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 349.

No. 01–73. ESCOBAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–74. ALMETER ET AL. *v.* VIRGINIA DEPARTMENT OF TAXATION. Sup. Ct. Va. Certiorari denied.

No. 01–76. HAHN AUTOMOTIVE CORP., DBA AUTOWORKS, INC. *v.* TAKACS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 776.

No. 01–78. KIRBY MCINERNEY & SQUIRE, LLP, ET AL. *v.* JOANNE A. ABOFF FAMILY TRUST. C. A. 3d Cir. Certiorari denied. Reported below: 243 F. 3d 722.

No. 01–79. CARTER *v.* SUN LIFE OF CANADA ET AL. Ct. App. Ind. Certiorari denied. Reported below: 736 N. E. 2d 351.

No. 01–80. BRYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–81. RYAN ET AL. *v.* JOHNSON ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 166 N. J. 340, 765 A. 2d 746.

No. 01–82. SCOTT *v.* SAFFLE, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 900.

No. 01–84. SWAB *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 766 A. 2d 892.

No. 01–85. RIVERS, PERSONAL REPRESENTATIVE OF THE ESTATE OF HARRIS, DECEASED, ET AL. *v.* WOOD COUNTY ET AL. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 51 S. W. 3d 626.

No. 01–87. NEBRASKA *v.* CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 241 F. 3d 979.

No. 01–89. BROUGH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 1078.

No. 01–90. BROUGHTON ET AL. *v.* PULASKI FISCAL COURT. Ct. App. Ky. Certiorari denied.

No. 01–93. NHA KHIEM TRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–95. KIMBERLY-CLARK CORP. *v.* TYCO INTERNATIONAL (US), INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 4 Fed. Appx. 946.

No. 01–96. HEIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–97. HORTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 739.

No. 01–98. GLENDALE UNION HIGH SCHOOL DISTRICT *v.* LUTZ. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 720.

No. 01–99. MEISEL ET AL. *v.* USTAOGLU ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 666.

No. 01–101. TRANSGLOBAL TELECOM ALLIANCE, INC., ET AL. *v.* AT&T CORP. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 490.

No. 01–102. HATTEBERG *v.* ADAIR ENTERPRISES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 239 F. 3d 365.

No. 01–103. KONANYKHINE *v.* IZVESTIA NEWSPAPER ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–104. CRIDER ET AL. *v.* BOARD OF COUNTY COMMISSIONERS OF COUNTY OF BOULDER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 1285.

No. 01–105. KEENEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 241 F. 3d 1040.

No. 01–108. ASBURY ET UX., PARENTS OF ASBURY *v.* MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1163.

No. 01–109. GILES *v.* UNIVERSITY OF MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 621.

No. 01–110. HARRIS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 32 S. W. 3d 926.

No. 01–111. RAJI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 238 F. 3d 1312.

No. 01–112. FEDERAL EXPRESS CORP. *v.* FUJITSU LTD. C. A. 2d Cir. Certiorari denied. Reported below: 247 F. 3d 423.

No. 01–113. BROWNE *v.* NEW YORK STATE OFFICE OF MENTAL HEALTH ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 129.

No. 01–114. BLACK ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 408.

No. 01–115. CHALAL *v.* COLUMBIA NORTHWEST MEDICAL CENTER. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 749.

No. 01–116. EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1 *v.* SOUTHWESTERN BELL TELEPHONE CO. C. A. 5th Cir. Certiorari denied. Reported below: 243 F. 3d 936.

No. 01–117. DIRIE *v.* DE FALCO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 244 F. 3d 286.

No. 01–118. BURROUGHS *v.* CHAMMAS ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–119. BARTON *v.* AU-YANG. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–121. ASSOCIATION OF WASHINGTON PUBLIC HOSPITAL DISTRICTS ET AL. *v.* PHILIP MORRIS INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 241 F. 3d 696.

No. 01–122. WITHERSPOON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 756 A. 2d 677.

No. 01–124. SAWYER *v.* VIRGINIA STATE BAR. Sup. Ct. Va. Certiorari denied.

No. 01–125. DOE, MOTHER AND LEGAL GUARDIAN OF DOE, A MINOR *v.* AMERICA ONLINE, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 783 So. 2d 1010.

No. 01–127. OLESZKO *v.* STATE COMPENSATION INSURANCE FUND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 1154.

No. 01–130. HUTCHINSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 779 So. 2d 735.

No. 01–132. FAIR ET UX. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 162.

No. 01–133. FITZGERALD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–136. DUNKL ET AL. *v.* CITY OF SAN DIEGO ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 86 Cal. App. 4th 384, 103 Cal. Rptr. 2d 269.

No. 01–137. DIX *v.* UNITED AIRLINES, INC. C. A. 7th Cir. Certiorari denied.

No. 01–138. LYCON, INC. *v.* EVI OIL TOOLS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 285.

No. 01–139. MAGNESS *v.* RUSSIAN FEDERATION ET AL.; and
No. 01–168. MAGNESS ET AL. *v.* RUSSIAN FEDERATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 247 F. 3d 609.

No. 01–140. MARTIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–141. ELJACK *v.* HAMMOUD ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–142. DURIGAN *v.* SANITARY DISTRICT NO. 4 - TOWN OF BROOKFIELD, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1157.

No. 01–143. GORDON *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 01–145. KEE ET AL. *v.* CITY OF ROWLETT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 247 F. 3d 206.

No. 01–146. NORTH *v.* SUPREME COURT OF ARIZONA ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 01–149. PARKS *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 163.

No. 01–150. PANDYA *v.* EDWARD HOSPITAL. C. A. 7th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 543.

No. 01–151. BARNES-JEWISH HOSPITAL ET AL. *v.* METROPOLITAN ST. LOUIS SEWER DISTRICT ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 41 S. W. 3d 487.

No. 01–153. BOWLER *v.* MAINE. C. A. 1st Cir. Certiorari denied. Reported below: 13 Fed. Appx. 9.

No. 01–154. ARMSTRONG *v.* PHILADELPHIA BOARD OF EDUCATION ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–155. MONAHAN *v.* DVI FINANCIAL SERVICES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 558.

No. 01–156. LANIER, DBA J. T. LANIER AGENCY *v.* OLD REPUBLIC INSURANCE CO. ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 790 So. 2d 922.

No. 01–157. WILEY *v.* UNITED PARCEL SERVICE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 181.

No. 01–158. SHAIA, TRUSTEE *v.* MEYER ET UX. C. A. 4th Cir. Certiorari denied. Reported below: 244 F. 3d 352.

No. 01–160. TA OPERATING CORP., DBA TRAVELCENTERS OF AMERICA *v.* FLORIDA DEPARTMENT OF REVENUE. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 767 So. 2d 1270.

No. 01–161. DIEHL *v.* AUGUSTA COUNTY, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–162. CANNON *v.* BEAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 490.

No. 01–165. GAGLIARDI *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 821 So. 2d 1033.

No. 01–171. GLENN ET AL. *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA. C. A. 8th Cir. Certiorari denied. Reported below: 240 F. 3d 679.

No. 01–174. LONG, INDIVIDUALLY AND DERIVATIVELY AS A SHAREHOLDER OF REGENCY HOME FASHIONS, INC. *v.* SILVER, INDIVIDUALLY AND IN HIS FIDUCIARY CAPACITY AS A SHAREHOLDER OF REGENCY HOME FASHIONS, INC., AND AS TRUSTEE OF THE LOUIS L. SILVER LIVING TRUST, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 309.

No. 01–182. SOSBEE *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 926.

No. 01–191. IANNACCONE *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 1 Fed. Appx. 96.

No. 01–192. FEWELL ET AL. *v.* PICKENS. Sup. Ct. Ark. Certiorari denied. Reported below: 344 Ark. 368, 39 S. W. 3d 447.

No. 01–193. HEITMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–198. STRICKLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 245 F. 3d 368.

No. 01–201. PERCAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 249 F. 3d 106.

No. 01–203. BLOUGH *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 627.

No. 01–208. PITNEY BOWES INC. ET AL. *v.* H & D TIRE & AUTOMOTIVE-HARDWARE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 227 F. 3d 326.

No. 01–209. BREEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 243 F. 3d 591.

No. 01–211. TRUDEL *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–212. HOYLE *v.* NATIONAL CREDIT UNION ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1134.

No. 01–216. AMERICAN MEDICAL SECURITY, INC. *v.* SKILSTAF, INC. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 163.

No. 01–217. LAKE CHARLES PILOTS, INC. *v.* DOXEY. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 781 So. 2d 589.

No. 01–218. ELLERBE *v.* MINETA, SECRETARY OF TRANSPORTATION. C. A. D. C. Cir. Certiorari denied. Reported below: 2 Fed. Appx. 6.

No. 01–219. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 250 F. 3d 527.

No. 01–222. HOLMES, AKA DOE *v.* TENET HEALTHSYSTEM MEDICAL INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 412.

No. 01–227. LABOMBARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 248 F. 3d 1128.

No. 01–233. WELTY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 F. 3d 716.

No. 01–234. TCI CABLEVISION OF CALIFORNIA, INC. *v.* INTELLECTUAL PROPERTY DEVELOPMENT, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 248 F. 3d 1333.

No. 01–235. CONCEPCION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 717.

No. 01–237. CEDILLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–242. BEATY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 245 F. 3d 617.

No. 01–259. LOGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 350.

No. 01–260. BENJAMIN *v.* KATTEN, MUCHIN & ZAVIS. C. A. 7th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 346.

No. 01–261. AKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 01–262. BONCZYK *v.* UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 10 Fed. Appx. 908.

No. 01–264. GRIBCHECK *v.* POTTER, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 245 F. 3d 547.

No. 01–268. SHOTTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 1076 and 1077.

No. 01–274. KASHELKAR *v.* RUBEN & ROTHMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 1 Fed. Appx. 7.

No. 01–286. TWEEDY *v.* OKLAHOMA BAR ASSN. Sup. Ct. Okla. Certiorari denied.

No. 01–289. MCCLATCHY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 249 F. 3d 348.

No. 01–290. BOSTRON *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 235.

No. 01–291. BERESFORD *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 525.

No. 01–293. REINHOLZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 765.

No. 01–294. SKELTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–295. PFLUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 682.

No. 01–297. JONESON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–307. HARPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 520.

No. 01–311. OSUALA *v.* COMMUNITY COLLEGE OF PHILADELPHIA. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 717.

No. 01–318. BRIDGES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 60.

No. 01–326. HYLAND *v.* STEVENS, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 6 Fed. Appx. 15.

No. 01–327. DHINSA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 243 F. 3d 635.

No. 01–343. MCCAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 494.

No. 01–5001. THOMASSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5002. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1177.

No. 01–5003. TOLBERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 372.

No. 01–5004. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5006. MARTINEZ-SILVA, AKA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 01–5007. FRANCISCO LIZARDO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 250 F. 3d 736.

No. 01–5008. JORDAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 236 F. 3d 953.

No. 01–5010. CEJA-CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703 and 704.

No. 01–5011. MURRAY *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5013. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 244 F. 3d 1037.

No. 01–5014. PENA-PEREZ, AKA ARAMBULA-HERNANDEZ *v.* UNITED STATES; MOLINA-FLORES *v.* UNITED STATES; and MORANCHEL-MAGANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703 (first and second judgments) and 704 (third judgment).

No. 01–5015. DOUGHERTY *v.* GREINER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5016. ELROD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5017. MCGRATH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5018. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 427.

No. 01–5019. WANN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 794.

No. 01–5020. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 440.

No. 01–5022. BRATTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–5023. DOAK *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 202 F. 3d 286.

No. 01–5024. VAKSDAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 669.

No. 01–5025. WILSON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–5026. VIZZINI *v.* MARYLAND. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 01–5027. MCFADDEN, AKA MCCOY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 238 F. 3d 198.

No. 01–5028. RAYA-RAMIREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 244 F. 3d 976.

No. 01–5030. DRESSLER *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 238 F. 3d 908.

No. 01–5031. PARRA-GONZALES, AKA PARRA GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5032. PANDO-FRANCO, AKA YSAASAGA-LEYVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5033. ROSEN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 96 N. Y. 2d 329, 752 N. E. 2d 844.

No. 01–5034. BOOKER *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 431.

No. 01–5035. SNIPES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1360.

No. 01–5036. KING *v.* WASHINGTON HILTON AND TOWERS. C. A. D. C. Cir. Certiorari denied.

No. 01–5037. LEE *v.* PENN NATIONAL INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 154.

No. 01–5039. LYONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5040. MATHEWS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–5041. ACUAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–5042. LEINBAUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5043. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5044. ADORNO *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL CENTER. C. A. 2d Cir. Certiorari denied.

No. 01–5045. PATZNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 588.

No. 01–5047. MCKINLEY *v.* BOWLEN, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 488.

No. 01–5048. BYES *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 01–5049. DELGADO-SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5051. BALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 01–5052. WILLIAMS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 795 So. 2d 785.

No. 01–5053. WARE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 341.

No. 01–5054. BEAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5056. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 96.

No. 01–5057. WEST *v.* POTTER, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 18.

No. 01–5058. TAYLOR *v.* FOSTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 701.

No. 01–5059. MCCOY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 760 A. 2d 164.

No. 01–5060. SUPREME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1363.

No. 01–5061. MARTINEZ-GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5062. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 190.

No. 01–5063. OLDHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 221.

No. 01–5064. MYERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 17 P. 3d 1021.

No. 01–5065. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5066. COOPERWOOD *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 245 F. 3d 1042.

No. 01–5067. BOLDEN *v.* BELL DAIRY PRODUCTS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1138.

No. 01–5068. REYES-VALDIVIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5069. PERACCHI *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 86 Cal. App. 4th 353, 102 Cal. Rptr. 2d 921.

No. 01–5070. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5071. GUDINO-LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1361.

No. 01–5074. HICKS *v.* SNYDER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 325.

No. 01–5075. BARBER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5076. HENRY, AKA BECTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 350.

No. 01–5077. HAYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5078. ESPARZA ISAIS, AKA ISAIS ESPARTZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 157.

No. 01–5079. FLORES-JUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5080. GUTIERREZ-HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 690.

No. 01–5081. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 529.

No. 01–5082. FLOWERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 01–5084. LAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 265.

No. 01–5085. RIVERA *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 247 Ga. App. 713, 545 S. E. 2d 105.

No. 01–5086. AUBREY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5087. SHORES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 417.

No. 01–5088. JORDAN *v.* BATTLES, WARDEN. Sup. Ct. Ill. Certiorari denied.

No. 01–5089. ROSENBERG *v.* CITY OF KALAMAZOO. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 435.

No. 01–5091. BLACKWELL *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5092. BAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 683.

No. 01–5093. RODRIGUEZ *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5094. RASHID *v.* CATOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 344.

No. 01–5095. SHELTON *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 01–5096. METHENEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 669.

No. 01–5097. FRANCISCO PEDRO, AKA FRANCISCO GARCIA *v.* UNITED STATES; SAUCEDA *v.* UNITED STATES; and ROMERO-RODRIGUEZ, AKA VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5098. CONTRERAS-HERNANDEZ *v.* UNITED STATES; LOPEZ-MARTINEZ *v.* UNITED STATES; MAREZ-ECHEVERRIA *v.* UNITED STATES; and MARTINEZ-PARALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704 (second and fourth judgments) and 705 (first and third judgments).

No. 01–5099. DE LA CRUZ-VILLARREAL *v.* UNITED STATES; HERNANDEZ *v.* UNITED STATES; IGNACIO IRACHETA *v.* UNITED STATES; and MUNOZ-LARA *v.* UNITED STATES. C. A. 5th Cir.

Certiorari denied. Reported below: 253 F. 3d 704 (first and fourth judgments) and 705 (second and third judgments).

No. 01–5100. EDINBURGH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1155, 783 N. E. 2d 237.

No. 01–5101. COX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 01–5102. DAWSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 01–5104. OWSLEY *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 234 F. 3d 1055.

No. 01–5105. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 478.

No. 01–5106. GOODWIN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 43 S. W. 3d 805.

No. 01–5107. PRICE *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 228 F. 3d 420.

No. 01–5108. PARKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 245 F. 3d 974.

No. 01–5110. WATTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 01–5111. WILLIAMSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 221 F. 3d 1177.

No. 01–5112. MURDOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 137.

No. 01–5113. PAFFHOUSEN *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 238 F. 3d 423.

No. 01–5114. MAI AN VAN *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5115. SANDOVAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 861.

No. 01–5116. ALFARO SOLORZANO *v.* UNITED STATES; ALVARADO-ROJAS *v.* UNITED STATES; ARREOLA-GARCIA *v.* UNITED STATES; GARIBAY-JIMENEZ *v.* UNITED STATES; and SILVEYRA-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5117. SMITH *v.* MASSIE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 235 F. 3d 1259.

No. 01–5118. ABUNDIS-QUESADA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1166.

No. 01–5120. JAMES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5121. POWELL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 796 So. 2d 434.

No. 01–5123. HUNG HOA NGUYEN *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–5124. LIGHTFOOT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 416.

No. 01–5125. WARREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 577.

No. 01–5126. GARCIA LIZAMA *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 245 F. 3d 503.

No. 01–5128. MADRID *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5129. GARCIA-MORENO *v.* UNITED STATES; SOLIS-CAMPOS *v.* UNITED STATES; MORALES-GAXIOLA, AKA MORALES *v.* UNITED STATES; VASQUEZ-ALVARADO *v.* UNITED STATES; and REYNA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704 (first judgment) and 705 (second through fifth judgments).

No. 01–5130. REYES-MACIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 605.

No. 01–5131. SANTIAGO-SIFUENTES ET AL. *v.* UNITED STATES; HUITRON-ARELLANO *v.* UNITED STATES; RESENDEZ *v.* UNITED

STATES; and BEIZA-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 01–5132. LANDRUM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1153.

No. 01–5133. BAEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 91.

No. 01–5134. BOONE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5135. SEARCY *v.* CARTER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 515.

No. 01–5138. PARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 701.

No. 01–5139. DELIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 01–5140. DILLARD *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 244 F. 3d 758.

No. 01–5141. CARR *v.* HEAD, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 613, 544 S. E. 2d 409.

No. 01–5142. HASAN, AKA LOMAX *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 682.

No. 01–5143. FLEMING *v.* BURLINGTON NORTHERN & SANTA FE RAILWAY CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 248 F. 3d 1170.

No. 01–5144. BEAULIEU *v.* OFFTECH, INC. Sup. Ct. N. H. Certiorari denied.

No. 01–5146. VALDEZ *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5147. UGOCHUKWU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 74.

No. 01–5151. OLVERA-YANEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 01–5153. PITTMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5154. HOLCOMB *v.* HOLCOMB (UPLINGER). Ct. App. Ind. Certiorari denied. Reported below: 735 N. E. 2d 856.

No. 01–5156. GRAHAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5157. VELASQUEZ *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5158. LOPEZ TIRADO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5159. TAYLOR *v.* HERBERT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5160. GAINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 163.

No. 01–5161. PONTOON *v.* BATTLE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–5162. KOLBASOOK *v.* MCCOY, SUPERINTENDENT, CAYUGA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 57.

No. 01–5165. BUSTAMANTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5166. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–5167. LINES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 97.

No. 01–5168. JONES *v.* BRYANT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–5171. SHAW ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5174. WROBEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 723.

No. 01–5175. LUCAS *v.* BLAINE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5176. RADIVOJEVIC *v.* AIR CANADA. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1159.

No. 01–5177. ANDERSON *v.* SCOTT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 203 F. 3d 841.

No. 01–5178. SHERMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 314 Ill. App. 3d 1120, 776 N. E. 2d 343.

No. 01–5179. ALEXIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1360.

No. 01–5180. CULP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 335.

No. 01–5181. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5182. KLEIN *v.* EDWARDS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5183. ABDELHAQ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 246 F. 3d 990.

No. 01–5185. LARA-ADAME *v.* UNITED STATES; MENDOZA-PICAZO *v.* UNITED STATES; ALVAREZ-LOPEZ *v.* UNITED STATES; CASTRO *v.* UNITED STATES; MEDINA-LIMAS *v.* UNITED STATES; and TREVIZO-RONQUILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5187. ROQUEMORE *v.* HORNUNG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5188. SIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5189. RADTKE *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5190. ROSS *v.* FILLON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5191. MORGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5193. TORRES-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 710.

No. 01–5194. SHONG-CHING TONG *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 01–5195. SAPP *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5196. SMITH *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5197. MARJI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5198. PLEASANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 262.

No. 01–5199. PAREDES-ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5200. BEASLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 676.

No. 01–5201. WILLIAMS *v.* BEELER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 314.

No. 01–5202. THOMAS *v.* MAZZUCA, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5203. VELAZQUEZ-DELALUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5204. CARDENAS-GALVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1160.

No. 01–5205. DUNKLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 160.

No. 01–5206. BLOUNT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 154.

No. 01–5208. SANDOVAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5210. RIOS-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5211. BOYD *v.* KEYBOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 672.

No. 01–5212. GARCIA-LONZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 577.

No. 01–5213. FORBES *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 01–5214. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 413.

No. 01–5215. FRENCHIK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5216. IRVIN *v.* STINE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5217. HOUSER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 384.

No. 01–5218. GREGORY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 245 F. 3d 160.

No. 01–5220. HALL *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5221. FRAZIER *v.* POSTON. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1164.

No. 01–5222. LYON *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5223. LOVEDAY *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5224. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 394.

No. 01–5225. HAMILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709 and 712.

No. 01–5226. HARRIS *v.* JOHNSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5227. WALKER *v.* MORRISON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 316.

No. 01–5229. BLACKSTONE *v.* UNITED STATES; and
No. 01–5396. GAINES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 635.

No. 01–5230. STRAKA *v.* CAMDEN COUNTY. Sup. Ct. N. J. Certiorari denied.

No. 01–5231. BEHRENS *v.* GIBSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 571.

No. 01–5232. CAMPBELL *v.* BRUNELLE, SUPERINTENDENT, WYOMING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 37.

No. 01–5233. DELATORRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5234. COOPER *v.* LORD, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5235. BARRETT *v.* NBC/NBC–KPVI CHANNEL 6 ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5236. SIMECEK *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 01–5237. OSORIO-SILOVAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5238. NAVA-RUIZ, AKA MORENO-LOPEZ *v.* UNITED STATES; and SANCHEZ-ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5239. PUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 879.

No. 01–5240. HOLMAN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 174, 540 S. E. 2d 18, and 353 N. C. 389, 547 S. E. 2d 29.

No. 01–5241. JOHNSON *v.* NEILSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 549.

No. 01–5242. GULOSH *v.* SEIDNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5245. HAND *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–5246. GANDY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5247. GREENE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 83 Cal. App. 4th 1398, 100 Cal. Rptr. 2d 507.

No. 01–5248. GILCREASE *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 32 S. W. 3d 277.

No. 01–5249. GREEN *v.* NEW YORK CITY DEPARTMENT OF CORRECTIONS ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–5250. GRIGSBY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 133.

No. 01–5251. IDOWU *v.* BOARD OF IMMIGRATION APPEALS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 32.

No. 01–5252. REDDING *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5253. ROSS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5254. SOUTHERN *v.* MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 01–5255. MALDONADO SEGURA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5256. RUDE *v.* WYOMING. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 682.

No. 01–5258. HOWARD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5259. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5260. HOLLOWAY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 245 Ga. App. 510, 537 S. E. 2d 708.

No. 01–5261. GARCIA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–5262. FIELD *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 673.

No. 01–5263. FREEMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5264. KOON *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 01–5265. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 706.

No. 01–5266. BROWN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1133.

No. 01–5267. HATTEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 876.

No. 01–5268. MESA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 1165.

No. 01–5269. MENDOZA-MARTINEZ *v.* UNITED STATES; and MARTINEZ-DE LA ROSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5270. PUEBLA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 01–5271. JUAREZ-GRAGEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704.

No. 01–5272. TERRAZAS-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1085.

No. 01–5273. WAKEFIELD *v.* MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 25.

No. 01–5274. ZARATE-HERNANDEZ *v.* UNITED STATES; MIRANDA-VALDOVINOS *v.* UNITED STATES; TREJO-PALOMEQUE *v.* UNITED STATES; FIGUEROA-MARTINEZ *v.* UNITED STATES; TINOCO-RAMIREZ *v.* UNITED STATES; VALLEJO-CANIZALES *v.* UNITED STATES; and RODRIGUEZ-TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703 (seventh judgment) and 704 (first through sixth judgments).

No. 01–5275. ABUHILWA *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5276. GILREATH *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 547.

No. 01–5277. CHIA *v.* FIDELITY BROKERAGE SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 642.

No. 01–5278. JONES *v.* BRUTON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–5279. RIOS-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 701.

No. 01–5280. URRUTIA ET AL. *v.* KYSOR INDUSTRIAL CORP. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 01–5281. GONZALEZ *v.* UNITED STATES; and MORENO-GALINDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702 (second judgment) and 703 (first judgment).

No. 01–5282. GONZALEZ-PLETEZ *v.* UNITED STATES; MELENDEZ *v.* UNITED STATES; MAYNES-TORRES *v.* UNITED STATES; and SOTO-ANDINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704 (third judgment) and 705 (first, second, and fourth judgments).

No. 01–5283. SCHMIDT *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5284. PADILLA-REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 1158.

No. 01–5285. NAVARRO-RAMOS, AKA NAVARRO-ARTEAGA, AKA NAVARRO-ACOSTA *v.* UNITED STATES; and RIOS MARQUIS *v.*

UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5286. MONDAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 394.

No. 01–5287. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 01–5288. LOVETT *v.* HALL, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 01–5289. KIZZEE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5290. PEREIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5291. MILLS *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5292. PEALOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 202 F. 3d 286.

No. 01–5293. CASADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 748.

No. 01–5294. CARLOS-COLMENARES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 253 F. 3d 276.

No. 01–5295. CONTRERAS-ALVARADO *v.* UNITED STATES; ALVAREZ-HERNANDEZ *v.* UNITED STATES; ESTRADA-DIAZ *v.* UNITED STATES; NAVARRO-ZUNIGA *v.* UNITED STATES; HERNANDEZ-SANCHEZ *v.* UNITED STATES; HERNANDEZ-SANCHEZ *v.* UNITED STATES; RIOS-RIOS *v.* UNITED STATES; and TEJADA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 704 (third, fifth, and sixth judgments) and 705 (first, second, fourth, seventh, and eighth judgments).

No. 01–5296. CONTRERAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 249 F. 3d 595.

No. 01–5297. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5298. SIMPKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–5299. HABER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 251 F. 3d 881.

No. 01–5300. GRESHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 158.

No. 01–5301. GARCIA-LUNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5302. HARPER *v.* WELBORN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–5303. MOONEY *v.* MAYLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5304. MULCAHY *v.* CITY OF KINGSTON ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–5306. LEYVA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5307. LUKENS *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5308. JOHNSON *v.* BLAIR ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 01–5309. JETTER *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 01–5310. ROBERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 494.

No. 01–5311. SAMUELS *v.* CORONA, SHERIFF, ORANGE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5312. PARKER *v.* FRANKLIN COUNTY CHILDREN SERVICES. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 01–5313. HERNANDEZ-NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 891.

No. 01–5314. GUMBS *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5316. HANSEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–5317. FIELDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5318. GOMEZ GUTIERREZ *v.* UNITED STATES; ARELLANO-CAMACHO *v.* UNITED STATES; CRUZ, AKA DOE *v.* UNITED STATES; GUZMAN DE PAZ, AKA ROJAS *v.* UNITED STATES; ISLAS-BRAVO *v.* UNITED STATES; LOPEZ-GUTIERREZ *v.* UNITED STATES; SANTIAGO-HERNANDEZ, AKA HERNANDEZ *v.* UNITED STATES; and TAFOYA-GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 656 (seventh judgment); 10 Fed. Appx. 593 (eighth judgment).

No. 01–5319. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1136.

No. 01–5320. ALSOP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 253.

No. 01–5321. PENIGAR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5322. MILLINES *v.* HATCHER ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5323. CHAPMAN *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5324. AMBROSIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5325. BENITEZ-VILLAFUERTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5326. DEATON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 549.

No. 01–5327. JAMBU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 438.

No. 01–5329. CORE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1184.

No. 01–5330. JACOBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5333. TAVAKKOLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1062.

No. 01–5334. WHITAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 816.

No. 01–5335. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 748 A. 2d 931.

No. 01–5336. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–5337. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 669.

No. 01–5338. WILLISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 616.

No. 01–5339. PEREZ-OLIVO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–5340. MCCANN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5341. HARP *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5342. HARTWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–5343. HICKMAN *v.* NASH, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 59.

No. 01–5344. REYES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 758 A. 2d 35.

No. 01–5345. RODRIGUEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–5347. ANDRADE-VARGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5350. TRIGGS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–5351. THOMPSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5352. WILLS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 451.

No. 01–5353. THOMAS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5354. WILLIAMS *v.* OHIO DEPARTMENT OF REHABILITATION AND CORRECTION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 415.

No. 01–5356. CUELLAR-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5357. HOSKINS *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 540.

No. 01–5364. SABA *v.* BARNES, GOVERNOR OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5365. LEIJA *v.* ELO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 500.

No. 01–5366. DOTSON *v.* SMITH. Ct. App. Mich. Certiorari denied.

No. 01–5367. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 241 F. 3d 546.

No. 01–5368. HARDESTY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 700.

No. 01–5369. GONZALEZ *v.* MILLER, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 1 Fed. Appx. 71.

No. 01–5370. FRENCH *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5371. FOYE *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 664.

No. 01–5372. GRIFFIN *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5373. WHITE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA. C. A. 10th Cir. Certiorari denied.

No. 01–5374. WHEELER *v.* MORGAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5375. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 246 F. 3d 1123.

No. 01–5376. BAUTISTA-MACIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 496.

No. 01–5377. ARTERBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 706.

No. 01–5378. AGHA *v.* PINE CREEK PROPERTIES ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5379. PRATCH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5380. DUNCAN *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 256 F. 3d 189.

No. 01–5381. CAMPOS-PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5382. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 718.

No. 01–5383. GERA *v.* HASSENFELD ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 248 F. 3d 1126.

No. 01–5384. OWEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–5385. PEREZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–5386. BERNARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 763.

No. 01–5387. NABELEK *v.* SCOTT, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–5388. BURKE *v.* IOWA UTILITY BOARD ET AL. Sup. Ct. Iowa. Certiorari denied.

No. 01–5389. SMITH *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 01–5390. BELCHER *v.* PEREZ ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–5391. VILLEGAS-GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5392. LASKODI *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5393. MENENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5394. MCCLINTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1158.

No. 01–5395. FARRIS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5397. FRAZIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 533.

No. 01–5398. HARDIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 489.

No. 01–5399. GRZESKOWIAK *v.* HVASS, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 01–5400. LOPEZ-GARCIA, AKA ALONZO GARCIA, AKA VARGAS, AKA LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–5401. KING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 737.

No. 01–5402. STOREY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 40 S. W. 3d 898.

No. 01–5403. NUNEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 223 F. 3d 956.

No. 01–5405. CHAVEZ-ORTEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 709.

No. 01–5406. BARRETT *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–5407. ROWELL *v.* NEVADA; ROWELL *v.* NEVADA; and ROWELL *v.* NEVADA ET AL. Sup. Ct. Nev. Certiorari denied.

No. 01–5408. MINIX ET AL. *v.* TRI CITIES HEALTH SERVICES CORP., DBA COLUMBIA RIVER PARK HOSPITAL, FKA HCA RIVER PARK HOSPITAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 413.

No. 01–5410. KEYES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5411. LOFTON *v.* UNITED STATES ET AL. Sup. Ct. Miss. Certiorari denied. Reported below: 785 So. 2d 287.

No. 01–5412. SAMANIEGO-CORREA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 896.

No. 01–5414. OSORIO-RALAC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 170.

No. 01–5415. SANTIBANEZ-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 570.

No. 01–5416. LLAHSRAM *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5417. LOONEY *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied. Reported below: 2 Fed. Appx. 8.

No. 01–5418. SOTELO-BARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–5419. SANTILLANES *v.* LEMASTER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 728.

No. 01–5421. ONIFER *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 479.

No. 01–5422. CEPEDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–5423. CURLEY *v.* PERRY, SECRETARY, NEW MEXICO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 1278.

No. 01–5424. SLAGEL *v.* RUTH ET AL. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 01–5425. PAYNE *v.* CORRECTIONS CORPORATION OF AMERICA ET AL. Sup. Ct. Va. Certiorari denied.

No. 01–5426. HULSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1160.

No. 01–5427. WATSON *v.* WHITE, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–5430. BUGGS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 484.

No. 01–5431. NEWMAN *v.* COMPTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–5432. BRUTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1136.

No. 01–5433. MARTIN ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1161.

No. 01–5434. BENNING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 772.

No. 01–5435. HARLOW *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5436. GUTIERREZ-LOPEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 697.

No. 01–5437. GRIFFIN *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 01–5438. GRAHAM *v.* BRIGHTLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5439. HURON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 174.

No. 01–5440. PARKER *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–5441. RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 677.

No. 01–5442. SCHREIBER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70 and 71.

No. 01–5443. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5444. SCHICKLER *v.* DAVIS, ACTING ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 10 Fed. Appx. 944.

No. 01–5445. REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 710.

No. 01–5446. BENSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5447. GONZALEZ, AKA LAZARO GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–5448. ABDULLAH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 240 F. 3d 683.

No. 01–5449. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 101.

No. 01–5450. MCDONALD *v.* WINTERS, SHERIFF, POPE COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 449.

No. 01–5451. BEST *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 250 F. 3d 1084.

No. 01–5452. DORSEY *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied. Reported below: 261 Va. 601, 544 S. E. 2d 350.

No. 01–5453. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–5454. JUSTICE *v.* MASSIE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 246 F. 3d 681.

No. 01–5455. WILLIAMS *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 237 F. 3d 147.

No. 01–5456. SRIVASTAVA *v.* INDIANA STATE PERSONNEL DEPARTMENT. C. A. 7th Cir. Certiorari denied.

No. 01–5457. SALLAS-MORENO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 825.

No. 01–5458. COATOAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 245 F. 3d 553.

No. 01–5459. SIMMONS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 235 F. 3d 1124.

No. 01–5460. MILES *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5461. BYRD *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–5463. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 433.

No. 01–5464. HILL *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 1038.

No. 01–5465. VASCONCELLO-GAITAN, AKA PERDOMO-MONTOYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–5466. SHEWFELT *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 328.

No. 01–5467. RILEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–5468. PEREZ *v.* MATESANZ, SUPERINTENDENT, BAY STATE CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 01–5469. LAMARCA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 785 So. 2d 1209.

No. 01–5470. MARTIN *v.* WELBORN. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–5471. COBB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 346.

No. 01–5472. CHANNITA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 274.

No. 01–5473. DELEON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5474. DICKENS *v.* ARIZONA. Super. Ct. Ariz., Yuma County. Certiorari denied.

No. 01–5475. MAISONNEUVE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 2 Fed. Appx. 209.

No. 01–5476. LOWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 256 F. 3d 463.

No. 01–5477. HURTADO *v.* TUCKER, ATTORNEY GENERAL OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied. Reported below: 245 F. 3d 7.

No. 01–5478. MCKINNEY *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5479. REYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–5480. MARSHALL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 525.

No. 01–5482. ARMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 899.

No. 01–5483. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1136.

No. 01–5484. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 671.

No. 01–5485. DERUISE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 802 So. 2d 1224.

No. 01–5486. MARTINEZ-TERRASAS, AKA DE LA PAZ ZAMORAZ, AKA MARTINEZ TERRAZAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5487. JOHNSON *v.* PALMATEER, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 631.

No. 01–5488. BOYD *v.* UNITED STATES RURAL DEVELOPMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1357.

No. 01–5489. SPEIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 01–5490. ANDERSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–5491. BASHAM *v.* WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1133.

No. 01–5492. BARONA *v.* FILLON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5493. HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–5494. HANEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 995 F. 2d 222.

No. 01–5495. BOLES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–5498. SIBLEY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–5499. SARTORI *v.* LEE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 150.

No. 01–5500. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 626.

No. 01–5503. MARTINEZ-CARILLO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 250 F. 3d 1101.

No. 01–5504. KEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 692.

No. 01–5506. LARSEN *v.* HONSTED, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5507. DODD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–5508. ELLIOTT *v.* WILLIAMS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 248 F. 3d 1205.

No. 01–5509. DEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 419.

No. 01–5511. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 74.

No. 01–5512. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 01–5513. BANDA-ANGUIANO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 755.

No. 01–5515. NDONG-NTOUTOUM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 1 Fed. Appx. 88.

No. 01–5516. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 713.

No. 01–5517. POTTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5520. NOWLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1083.

No. 01–5521. NEWMAN *v.* GEARINGER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–5522. MITCHELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5525. GUZMAN-COTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5527. HORTON *v.* IOWA. Sup. Ct. Iowa. Certiorari denied. Reported below: 625 N. W. 2d 362.

No. 01–5532. LETTNER *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied.

No. 01–5534. DANIELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 247 F. 3d 598.

No. 01–5535. BERRIOS-CENTENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 294.

No. 01–5537. VAL SAINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–5538. WALTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 255 F. 3d 437.

No. 01–5539. TREADWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 502.

No. 01–5540. SHACKS *v.* TESSMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 344.

No. 01–5542. THARP *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 40 S. W. 3d 356.

No. 01–5543. WARD ET AL. *v.* BOOKER, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 01–5546. WHITE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5547. TIPPIT *v.* HOOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–5552. CRIPPS *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5553. CHAPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 71.

No. 01–5555. NEWTON *v.* PAOLINO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 687.

No. 01–5561. BARRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–5565. WINKLEMAN *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5566. WASHINGTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1160, 783 N. E. 2d 239.

No. 01–5567. THOMAS *v.* SMITH, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5569. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 478.

No. 01–5576. MALE JUVENILE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5577. KRATSAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 107.

No. 01–5578. JACKSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 F. 3d 1028.

No. 01–5579. DOZIER *v.* MACK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5580. RAMIREZ-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 622.

No. 01–5584. GIBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 404.

No. 01–5585. FREEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 192.

No. 01–5591. HURLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 1149.

No. 01–5593. HILLSMAN *v.* PETERSON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–5595. FIGUEROA *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5596. SIMONS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 01–5597. ONIFER *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 255 F. 3d 313.

No. 01–5599. TURNAGE *v.* UNITED STATES;
No. 01–5620. RIDDLE *v.* UNITED STATES; and
No. 01–5623. ALTSHULER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 529.

No. 01–5606. COLLINS *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 671.

No. 01–5607. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 420.

No. 01–5610. DANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 355.

No. 01–5611. CHACKO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5612. CHRYSLER *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5615. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 718.

No. 01–5617. POSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 700.

No. 01–5621. ANDERSON *v.* STERNES, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 1049.

No. 01–5624. STRICKLAND ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 245 F. 3d 368.

No. 01–5626. ROBLES *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5627. MENDIAS-CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 953.

No. 01–5628. CASTILLO MABINI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 573.

No. 01–5631. CASTILLO-RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 244 F. 3d 1020.

No. 01–5633. CHEUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 522.

No. 01–5634. CHAMBERS *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5635. ORANTES-MENDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 752.

No. 01–5638. LOUIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 1103.

No. 01–5639. LESTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5640. LEMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 669.

No. 01–5642. KIKIVARAKIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 01–5643. ALFORD *v.* BAKER ET AL. C. A. 4th Cir. Certiorari denied.

No. 01–5644. FARRUGIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5645. HINES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5646. FAISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 669.

No. 01–5648. LAZARO GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1145.

No. 01–5649. BURKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–5650. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1144.

No. 01–5652. REYNA-SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 71.

No. 01–5654. SEDGWICK *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 560.

No. 01–5655. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5656. MATHIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5657. CRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–5661. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 440.

No. 01–5666. DENNIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5668. GUAJARDO-HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 750.

No. 01–5669. RIGGANS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 254 F. 3d 1200.

No. 01–5672. SAMUEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 145.

No. 01–5674. REYNOSO *v.* COUGHLIN ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–5675. SIMMONS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 718.

No. 01–5676. RAMOS-SANTIAGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1185.

No. 01–5677. NAGY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 670.

No. 01–5678. SIMMONS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 797 So. 2d 1134.

No. 01–5680. AGRON *v.* TRUSTEES OF COLUMBIA UNIVERSITY OF THE CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 01–5684. BUTTERFIELD *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 01–5689. WILLIAMS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 18 Fed. Appx. 1.

No. 01–5692. NICHOLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–5695. JIMENEZ *v.* TEXAS (three judgments). Ct. App. Tex., 10th Dist. Certiorari denied.

No. 01–5696. KENNEDY, AKA KORNEGAY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 01–5699. PAALAN *v.* ENGLAND, SECRETARY OF THE NAVY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–5703. AIKEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 74.

No. 01–5704. AUGOSTO CABRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1084.

No. 01–5705. IFEAGWU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–5706. CHEVALIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 765.

No. 01–5707. CARDENAS-VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–5708. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1136.

No. 01–5710. BAILEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5713. SANCHEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 251 F. 3d 598.

No. 01–5714. HAMPTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–5715. GERRITSEN *v.* PONTESSO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 674.

No. 01–5721. SNYDER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–5722. DALLAS *v.* GAMBLE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 563.

No. 01–5724. ECKENRODE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5725. CROSBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 668.

No. 01–5728. BRACKEN *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 247 F. 3d 699.

No. 01–5729. BERRIOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 262 F. 3d 404.

No. 01–5732. DAVIS *v.* STERNES, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–5733. CUNACA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 514.

No. 01–5739. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 234.

No. 01–5743. BARKLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5744. THOMAS *v.* DUKES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5745. TALLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 512.

No. 01–5747. KENNEDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 343.

No. 01–5748. MALDONADO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5749. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 315.

No. 01–5752. BLAGOUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5753. ABIGANTUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5754. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 522.

No. 01–5760. TIETJEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 264 F. 3d 391.

No. 01–5761. PRI-HAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 4.

No. 01–5762. PETTWAY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5763. OUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–5766. SANDUSKY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 815.

No. 01–5767. LOPEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–5768. KOLLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 98.

No. 01–5770. MCLEOD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 251 F. 3d 78.

No. 01–5771. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 582.

No. 01–5772. GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 792.

No. 01–5773. HERNANDEZ-AVALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 505.

No. 01–5783. JORGE-CARLOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 63.

No. 01–5786. BAKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 717.

No. 01–5787. CLARKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–5795. EKPETI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 719.

No. 01–5798. HARRIS *v.* SCOTT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1147.

No. 01–5800. HAEGER *v.* LANSING. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 893.

No. 01–5804. IVY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–5807. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 234.

No. 01–5809. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 123.

No. 01–5812. SALGADO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 438.

No. 01–5813. CRUZ-GARCIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 9.

No. 01–5814. AGUIRRE-URENA, AKA ALVAREZ-URENA, AKA AGUIRRE-URRENYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5815. TORRES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 138.

No. 01–5822. CALDERON-MESA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 01–5823. BRYANT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–5826. TORRES-GONZALEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 834.

No. 01–5827. VEZIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–5828. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 01–5829. BOOKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 358.

No. 01–5832. TAYLOR *v.* DEWALT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 117.

No. 01–5833. WHITMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 436.

No. 01–5834. PARRILLA-SANES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 248 F. 3d 1128.

No. 01–5835. HARBIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 438.

No. 01–5836. BOUSTAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 495.

No. 01–5838. PHIFER, AKA DAYE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 254 F. 3d 514.

No. 01–5839. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 182.

No. 01–5845. SVEUM *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–5848. PAILLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–5849. SNULLIGAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 375.

No. 01–5851. BUTLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 664.

No. 01–5853. ESTRADA-CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1082.

No. 01–5854. VENEGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1363.

No. 01–5858. BANICKI *v.* NAPOLITANO, ATTORNEY GENERAL OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 01–5859. TORRES-OTERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 232 F. 3d 24.

No. 01–5863. CESTNIK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 820.

No. 01–5866. STRIBLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 706.

No. 01–5871. WOODS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 623.

No. 01–5872. TALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 220.

No. 01–5875. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 90.

No. 01–5881. MURPHY *v.* STRACK, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 71.

No. 01–5883. MERIDYTH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1082.

No. 01–5884. RONQUILLO PALMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 748.

No. 01–5886. DENNY *v.* GUDMANSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 252 F. 3d 896.

No. 01–5888. CALDWELL *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 472.

No. 01–5890. JESTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 01–5892. CONTRERAS PEREZ, AKA PEREZ-PERALTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 653.

No. 01–5893. RODRIGUEZ-MONTOYA, AKA RODRIGUEZ-GARCIA *v.* UNITED STATES; ROMAN-ADAME, AKA LOPEZ *v.* UNITED STATES; SANDOVAL-MANZO *v.* UNITED STATES; VALENZUELA-GONZALEZ *v.* UNITED STATES; and VELAZQUEZ-MATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 166.

No. 01–5895. ESPINOZA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5896. MARTINEZ-MENDOZA *v.* UNITED STATES; OLMEDA-GONZALEZ *v.* UNITED STATES; ORNELAS-CARILLO *v.* UNITED STATES; REAL-CASTILLO *v.* UNITED STATES; and RIOS-BARDALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari de-

nied. Reported below: 263 F. 3d 165 (first through fourth judgments) and 166 (fifth judgment).

No. 01–5897. NGOC BICH NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 615.

No. 01–5903. FULCHER, AKA FERGUSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 250 F. 3d 244.

No. 01–5905. FROELICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 654.

No. 01–5906. FLORES-GONZALES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 988.

No. 01–5908. ALMENDAREZ-RODRIGUEZ *v.* UNITED STATES; CHAVEZ-MENDOZA *v.* UNITED STATES; CRESPO-DIAZ *v.* UNITED STATES; GUTIERREZ-VARELA *v.* UNITED STATES; and HERNANDEZ-PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 166.

No. 01–5909. MOSLEY *v.* UNITED STATES; and
No. 01–5980. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 621.

No. 01–5919. BARAJAS-AGUILAR *v.* UNITED STATES; ACEBEDO-PEREZ *v.* UNITED STATES; ALVAREZ-MADRIGAL *v.* UNITED STATES; ALVAREZ-MADRIGAL *v.* UNITED STATES; AMEZCUA-MORALES *v.* UNITED STATES; ANGUIANO-RAMIREZ *v.* UNITED STATES; APOLINAR-APOLINAR *v.* UNITED STATES; AYALA-FAVELA *v.* UNITED STATES; BACA-CONTRERAS *v.* UNITED STATES; BASTIAN-PEREZ *v.* UNITED STATES; ESCOBAR-SOTELO *v.* UNITED STATES; GARCIA-AGUILAR *v.* UNITED STATES; GARCIA-PANIAGUA *v.* UNITED STATES; GOMEZ-CASTILLO *v.* UNITED STATES; GOMEZ-FONSECA *v.* UNITED STATES; GONZALEZ-PACHECO *v.* UNITED STATES; GUZMAN-NAVARRO *v.* UNITED STATES; GUZMAN-ORDAZ *v.* UNITED STATES; HEREDIO-MERCADO *v.* UNITED STATES (Reported below: 10 Fed. Appx. 608); LEDESMA-ACEVES *v.* UNITED STATES; LEMUS-LEMUS *v.* UNITED STATES; LEON-CARRILLO *v.* UNITED STATES; LOPEZ-ARAUJO *v.* UNITED STATES; LOPEZ-CARILLO *v.* UNITED STATES; LOPEZ-GUTIERREZ *v.* UNITED STATES; MARINES MARCIAL *v.* UNITED STATES; MARTINEZ-SALCEDO *v.* UNITED STATES; MENDOZA-VILLA *v.* UNITED STATES; OCHOA-ROMAN *v.* UNITED STATES; ORTIZ-

RODRIGUEZ *v.* UNITED STATES; PADILLA-SANCHEZ *v.* UNITED STATES; PEREZ-SANCHEZ *v.* UNITED STATES; PORTILLO-SANCHEZ *v.* UNITED STATES; RIVERA-GONZALEZ *v.* UNITED STATES; ROMERO-CORTEZ *v.* UNITED STATES (13 Fed. Appx. 541); RUEDA-FLORES *v.* UNITED STATES; SANCHEZ-RIVERA *v.* UNITED STATES; TELLEZ-FLORENCIO *v.* UNITED STATES; TORRES-RANGEL *v.* UNITED STATES (20 Fed. Appx. 609); VALDEZ-MEDINA *v.* UNITED STATES; and VILLA-GASTELO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5922. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 516.

No. 01–5923. TOUSSAINT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 701.

No. 01–5924. VALLES, AKA MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 656.

No. 01–5925. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 317.

No. 01–5926. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–5927. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–5937. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 232 F. 3d 556.

No. 01–5940. VALDEZ-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 484.

No. 01–5941. MCCLOUD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 626.

No. 01–5942. MUDIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 333.

No. 01–5946. ESTUPINAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 739.

No. 01–5947. TRAYLOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5948. ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5950. LEVY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 1015.

No. 01–5951. MARIN-NAVARETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 1284.

No. 01–5954. SCATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 208.

No. 01–5958. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1361.

No. 01–5961. CAMARILLO-VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 578.

No. 01–5962. CORREA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 250 F. 3d 736.

No. 01–5968. KAHL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 783.

No. 01–5970. LESPIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 65.

No. 01–5971. LLOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 225.

No. 01–5972. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–5973. MARTINEZ-CEBALLOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 673.

No. 01–5975. ROSE *v.* LEE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 252 F. 3d 676.

No. 01–5978. RIOS-IBARRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5979. SHORTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 732.

No. 01–5984. EPPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 959.

No. 01–5985. CHASER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 685.

No. 01–5989. BERNAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5991. LOMAS-FLORES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 582.

No. 01–5994. ARRIAGA-ARROYO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 567.

No. 01–5995. URIBE-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1140.

No. 01–5997. REYNAGA-FREGOZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 525.

No. 01–5998. ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–6001. PARGA-ROSAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1209.

No. 01–6003. PARKHURST *v.* DEPARTMENT OF EDUCATION. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 900.

No. 01–6006. CASTIO MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6010. PACHECO-ADAME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 572.

No. 01–6012. ARREOLA-NAJERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 608.

No. 01–6013. ALEGRIA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 01–6015. DIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 296.

No. 01–6019. FIGUEROA-GARCIA *v.* UNITED STATES; CEZBERG-LOARCA, AKA LOPEZ, AKA LOARCA *v.* UNITED STATES; and DIAZ-PINEDA, AKA DIAZ-PENETHA *v.* UNITED STATES. C. A.

9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 569 (first judgment); 14 Fed. Appx. 881 (second judgment).

No. 01–6020. PEOPLES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 248 F. 3d 1161.

No. 01–6022. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 01–6023. SANTILLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 1125.

No. 01–6029. JOHNSON *v.* UNITED STATES; and OHMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 524 (first judgment); 13 Fed. Appx. 568 (second judgment).

No. 01–6032. FORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 303.

No. 01–6039. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–6054. TATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 171.

No. 01–6059. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 00–1469. BEIN ET VIR *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioners to strike the brief in opposition denied. Certiorari denied. Reported below: 214 F. 3d 408.

No. 00–1518. MCGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY *v.* MASK. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 233 F. 3d 132.

No. 00–1774. CALDERON, WARDEN *v.* SANDOVAL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 241 F. 3d 765.

No. 00–1882. PARKER, WARDEN *v.* SKAGGS. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 235 F. 3d 261.

No. 01–17. HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* FAHY. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 240 F. 3d 239.

No. 01–67. FLORIDA *v.* MUHAMMAD. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 782 So. 2d 343.

No. 00–1717. LEE *v.* PONANI ET AL. Ct. App. Cal., 4th App. Dist. Motions of California Appellate Defense Counsel and California Public Defenders Association for leave to file briefs as *amici curiae* granted. Certiorari denied.

No. 00–1775. ARAVE, WARDEN *v.* HOFFMAN. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Motion of respondent for leave to file Appendix B under seal granted. Certiorari denied. Reported below: 236 F. 3d 523.

No. 00–1813. ALI *v.* ALAMO RENT-A-CAR, INC. C. A. 4th Cir. Motions of American Jewish Congress et al. and American-Arab Anti-Discrimination Committee et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 246 F. 3d 662.

No. 00–1818. LEYS *v.* WELLS FARGO ARMED SERVICE CORP. ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 232 F. 3d 213.

No. 00–1949. HILL *v.* WAL-MART STORES, INC. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 246 F. 3d 665.

No. 00–9987. SHACKLEFORD *v.* HUBBARD, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 234 F. 3d 1072.

No. 01–52. PACIFIC FISHERIES CORP. *v.* H. I. H. CASUALTY & GENERAL INSURANCE, LTD., ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 239 F. 3d 1000.

No. 00–1826. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA *v.* ALEXANDER ET AL. Sup. Ct. Miss. Motions of Mississippi Manufacturers Association, American Council of Life In-

surers, National Association of Independent Insurers, and Chamber of Commerce of the United States for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 818 So. 2d 1073.

No. 00–1894. MARTIN *v.* DEPARTMENT OF EDUCATION ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 00–10250. KINCAID *v.* COUNTY OF SACRAMENTO ET AL. Ct. App. Cal., 3d App. Dist. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 00–10618. BEAZLEY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA, JUSTICE SOUTER, and JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 242 F. 3d 248.

No. 01–8. ARKANSAS PRESBYTERY OF THE CUMBERLAND PRESBYTERIAN CHURCH *v.* HUDSON ET AL. Sup. Ct. Ark. Motion of Catherine Urich et al. for leave to file a brief as *amici curiae* denied. Certiorari denied. Reported below: 344 Ark. 332, 40 S. W. 3d 301.

No. 01–29. AMWAY CORP. ET AL. *v.* PROCTER & GAMBLE CO. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 242 F. 3d 539.

No. 01–91. DOVE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to file a portion of the appendix under seal granted. Certiorari denied. Reported below: 247 F. 3d 152.

No. 01–5109. WEBB *v.* VIRGINIA. Sup. Ct. Va. Motion of National Association of Criminal Defense Lawyers et al. for leave to file a brief as *amici curiae* granted. Certiorari denied.

Rehearing Denied

No. 00–1375. CONSUL GENERAL FOR THE REPUBLIC OF POLAND IN CHICAGO ET AL. *v.* ILLINOIS ET AL., 533 U. S. 911;

No. 00–1622. EMERY *v.* CITY OF TOLEDO, 533 U. S. 916;

No. 00–1670. CAMOSCIO *v.* DEMINICO, 533 U. S. 951;

No. 00–8013. JONES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 532 U. S. 930;

No. 00–8360. KNIGHT *v.* UNITED STATES, 533 U. S. 952;

No. 00–8900. NICHOLS *v.* UNITED STATES, 532 U. S. 985;

No. 00–9453. DUNLAP *v.* STRAUB, WARDEN, 532 U. S. 1056;

No. 00–9676. JEFFERSON *v.* SMALLS, 533 U. S. 935;

No. 00–9791. MYHAND *v.* FLORIDA, 533 U. S. 936;

No. 00–9814. CHUN-HSUAN SU *v.* POLYTECHNIC UNIVERSITY, 533 U. S. 921;

No. 00–9998. LUCAS *v.* WELBORN, WARDEN, 533 U. S. 937; and

No. 00–10089. LABLANCHE *v.* UNIVERSITY OF IOWA ET AL., 533 U. S. 958. Petitions for rehearing denied.

OCTOBER 2, 2001

Miscellaneous Order

No. 01A298. ROBERTS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. Application for certificate of appealability and for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

OCTOBER 3, 2001

Certiorari Denied

No. 01–6476 (01A284). WARD *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Pitt County, N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 9, 2001

Dismissal Under Rule 46

No. 01–281. AT&T CORP. *v.* AMERICA ONLINE, INC.; and

No. 01–448. AMERICA ONLINE, INC. *v.* AT&T CORP. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 243 F. 3d 812.

Certiorari Granted—Vacated and Remanded

No. 01–75. GENTALA ET VIR *v.* CITY OF TUCSON. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Good News Club* v. *Milford*

Central School, 533 U. S. 98 (2001). Reported below: 244 F. 3d 1065.

No. 01–176. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA *v.* TEXTRON FINANCIAL CORP. Ct. App. Cal., 4th App. Dist. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Cooper Industries, Inc.* v. *Leatherman Tool Group, Inc.*, 532 U. S. 424 (2001).

Certiorari Dismissed

No. 01–5518. MULAZIM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–5519. MCREYNOLDS *v.* LITTLE FLOWER CHILDREN'S SERVICES ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 282 App. Div. 2d 290, 723 N. Y. S. 2d 357.

No. 01–5934. WASHINGTON *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir.; and

No. 01–5935. WASHINGTON *v.* SOCIAL SECURITY ADMINISTRATION, LAKE CHARLES OFFICE, ET AL. C. A. 5th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2188. IN RE DISBARMENT OF TIDWELL. Motion for reconsideration of order of disbarment [532 U. S. 1050] denied.

No. 01M16. MANESS *v.* FULLER ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 00–1514. RAYGOR ET AL. *v.* REGENTS OF THE UNIVERSITY OF MINNESOTA ET AL. Sup. Ct. Minn. [Certiorari granted, 532 U. S. 1065.] Motion of the United States to intervene granted.

No. 00–188. PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA *v.* CONCANNON, COMMISSIONER, MAINE DEPARTMENT OF HUMAN SERVICES, ET AL. C. A. 1st Cir.; and

No. 01–270. YELLOW TRANSPORTATION, INC. *v.* MICHIGAN ET AL. Sup. Ct. Mich. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 00–5598. GRIFFIN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 30, 2001, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 01–5720. IN RE JONES;
No. 01–6242. IN RE EL-TABECH; and
No. 01–6297. IN RE BROWN. Petitions for writs of habeas corpus denied.

No. 01–6654 (01A317). IN RE WARD. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 01–5738. IN RE GRAY; and
No. 01–5969. IN RE KAHL. Petitions for writs of mandamus denied.

No. 01–385. IN RE VEY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 00–1707. KLEVE *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 1149.

No. 00–1829. ADVANCED STRETCHFORMING INTERNATIONAL, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 233 F. 3d 1176.

No. 00–1916. WALTON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 41 S. W. 3d 75.

No. 00–1924. B. J. M. *v.* FAMILY OPTIONS ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 00–1927. ODEN *v.* OKTIBBEHA COUNTY, MISSISSIPPI, ET AL.; and

No. 01–255. BRYAN, SHERIFF OF OKTIBBEHA COUNTY *v.* ODEN. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 458.

No. 00–1928. LOVING *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 459.

No. 00–1930. CROLL *v.* CROLL. C. A. 2d Cir. Certiorari denied. Reported below: 229 F. 3d 133.

No. 00–1933. ANDERSON *v.* RUSSELL. C. A. 4th Cir. Certiorari denied. Reported below: 247 F. 3d 125.

No. 00–1934. AMERICAN GENERAL FINANCE, INC., ET AL. *v.* BRANCH. Sup. Ct. Ala. Certiorari denied. Reported below: 793 So. 2d 738.

No. 00–1940. FINLAN *v.* DALLAS INDEPENDENT SCHOOL DISTRICT ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 27 S. W. 3d 220.

No. 00–9476. HOYLE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 237 F. 3d 1.

No. 00–10022. FUNDERBURK ET UX. *v.* CSX TRANSPORTATION, INC. C. A. 4th Cir. Certiorari denied.

No. 00–10118. MCCREADY *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 00–10145. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10494. ST. JULES *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 00–10530. WILLIAMS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 241 Wis. 2d 631, 623 N. W. 2d 106.

No. 00–10704. COHEN *v.* GRANT, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 00–10817. ARROYO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–1. BRIDGESTONE/FIRESTONE, INC. *v.* POLYMER INDUSTRIAL PRODUCTS CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 10 Fed. Appx. 812.

No. 01–2. ECHEVARRIETA *v.* CITY OF RANCHO PALOS VERDES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 86 Cal. App. 4th 472, 103 Cal. Rptr. 2d 165.

No. 01–14. MUCKLESHOOT INDIAN TRIBE *v.* PUYALLUP INDIAN TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 235 F. 3d 429.

No. 01–15. ALEE CELLULAR COMMUNICATIONS *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 01–16. ANTONIO GUZMAN *v.* FEDERAL EXPRESS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 156.

No. 01–25. TRENKLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–30. PRIETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 816.

No. 01–58. MASSEY *v.* BOARD OF TRUSTEES OF THE OGDEN AREA COMMUNITY ACTION COMMITTEE, INC. C. A. 10th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 611.

No. 01–61. PEARSON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, ET AL. *v.* COMPONENT TECHNOLOGY CORP., AKA COMPTECH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 247 F. 3d 471.

No. 01–69. GAUNT ET AL. *v.* PITTAWAY ET AL. Ct. App. N. C. Certiorari denied. Reported below: 139 N. C. App. 778, 534 S. E. 2d 660.

No. 01–83. REDDWARF STARWARE, LLC *v.* MEADE INSTRUMENTS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 250 F. 3d 759.

No. 01–159. SHARRIEF ET UX. *v.* GERLACH. Sup. Ct. Ala. Certiorari denied. Reported below: 798 So. 2d 646.

No. 01–166. AFSCME, COUNCIL #15, LOCAL 1159, AFL–CIO *v.* BRIDGEPORT GUARDIANS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 248 F. 3d 66.

No. 01–170. HAWKINS, SUPERINTENDENT, COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO, ET AL. *v.* NEIBERGER ET AL.

C. A. 10th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 683.

No. 01–177. COUSIN *v.* TRANS UNION CORP. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 359.

No. 01–179. CITY OF PASCO *v.* HOPPER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 241 F. 3d 1067.

No. 01–180. PALMER *v.* BERTRAND. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 475, 541 S. E. 2d 360.

No. 01–181. MORIAL, MAYOR OF NEW ORLEANS, ET AL. *v.* SMITH & WESSON CORP. ET AL. Sup. Ct. La. Certiorari denied. Reported below: 785 So. 2d 1.

No. 01–185. BONNELL ET UX. *v.* LORENZO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 241 F. 3d 800.

No. 01–186. NATIONAL GEOGRAPHIC SOCIETY ET AL. *v.* GREENBERG ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 1267.

No. 01–187. DANIELS *v.* CITY OF ARLINGTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 500.

No. 01–189. THOMAS ET AL. *v.* POWELL, SECRETARY OF STATE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 247 F. 3d 260.

No. 01–194. FORD *v.* FRAME ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 316.

No. 01–196. SERNA *v.* CITY OF SAN ANTONIO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 479.

No. 01–197. SLATTERY *v.* SWISS REINSURANCE AMERICA CORP. C. A. 2d Cir. Certiorari denied. Reported below: 248 F. 3d 87.

No. 01–199. PACIFICARE OF CALIFORNIA, INC., ET AL. *v.* MCCALL, INDIVIDUALLY AND AS TRUSTEE OF MCCALL. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 412, 21 P. 3d 1189.

No. 01–206. SZABO, DBA ZATRON, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED *v.* BRIDGEPORT MA-

CHINES INC. C. A. 7th Cir. Certiorari denied. Reported below: 249 F. 3d 672.

No. 01–207. RICHARD *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 01–210. BRUFF *v.* NORTH MISSISSIPPI HEALTH SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 495.

No. 01–214. CENTRAL TEXAS NUDISTS ET AL. *v.* TRAVIS COUNTY, TEXAS, ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 01–215. DIXON ET AL. *v.* FORD MOTOR CREDIT CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–221. GAINES *v.* WHITE RIVER ENVIRONMENTAL PARTNERSHIP ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 345.

No. 01–224. MENTAVLOS *v.* ANDERSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 249 F. 3d 301.

No. 01–225. BOCZAR ET VIR *v.* KINGEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 471.

No. 01–231. SANDERS *v.* BOY SCOUTS OF AMERICA ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 768 A. 2d 893.

No. 01–232. WOOLDRIDGE *v.* HAMILTON COUNTY DEPARTMENT OF HUMAN SERVICES. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 01–236. MICROSOFT CORP. *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 253 F. 3d 34.

No. 01–239. UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC, ET AL. *v.* APPALACHIAN REGIONAL HEALTHCARE, INC. C. A. 6th Cir. Certiorari denied. Reported below: 245 F. 3d 601.

No. 01–243. BARTOLETTI *v.* JANICICH ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 305 Mont. 533.

No. 01–244. MIRANDA DE VILLALBA *v.* COUTTS & CO. (USA) INTERNATIONAL. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 1351.

No. 01–245. DAHLZ *v.* SAN MATEO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 575.

No. 01–247. NAZIMUDDIN ET UX. *v.* WOODLANE FOREST CIVIC ASSN., INC., ET AL. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 01–250. HALEY *v.* CHESAPEAKE'S PUBLIC SCHOOL SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 171.

No. 01–251. BROWN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–254. PRIMO ET UX. *v.* COLANERO CONTRACTING CO. ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 758 A. 2d 731.

No. 01–256. JACKSON ET AL. *v.* TANGREEN. Ct. App. Ariz. Certiorari denied. Reported below: 199 Ariz. 306, 18 P. 3d 100.

No. 01–257. GREMMINGER *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 01–263. DYNAQUEST CORP., DBA A. C. L., ET AL. *v.* UNITED STATES POSTAL SERVICE. C. A. D. C. Cir. Certiorari denied. Reported below: 242 F. 3d 1070.

No. 01–266. DEMAIO *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 8 Fed. Appx. 969.

No. 01–267. STERN *v.* SAFECO, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 717.

No. 01–273. SCOVILLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 250 F. 3d 1198.

No. 01–275. JACOBS ET AL. *v.* AMERICAN EXPRESS CO., INC., ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–282. KILGROE *v.* PACIFIC MARITIME ASSN. ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–296. STOIANOFF *v.* COMMISSIONER OF MOTOR VEHICLES OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 12 Fed. Appx. 33.

No. 01–302. EVERARD *v.* WASHINGTON STATE BAR ASSN. Sup. Ct. Wash. Certiorari denied.

No. 01–305. WILSON *v.* RUST ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–306. FRANCER *v.* SMALL, SECRETARY OF THE SMITHSONIAN, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–312. BROWN *v.* FORD MOTOR CO. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 663.

No. 01–313. BREWER *v.* DUNAWAY, DIRECTOR, FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 513.

No. 01–330. RICHARD TER MAAT, INC., ET AL. *v.* BROWNING-FERRIS INDUSTRIES OF ILLINOIS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 626.

No. 01–331. JACKES *v.* BILL HARBERT INTERNATIONAL CONSTRUCTION CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 01–347. CORRAL ET UX. *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–350. JOHNSON *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 18 Fed. Appx. 837.

No. 01–354. JONES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–355. DUBUC *v.* MICHIGAN BOARD OF LAW EXAMINERS. Sup. Ct. Mich. Certiorari denied.

No. 01–362. AUSTIN *v.* HANOVER INSURANCE CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 109.

No. 01–366. MAXWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–369. SMITH *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1357.

No. 01–376. WOODS *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 234 F. 3d 979.

No. 01–388. JOHNSON *v.* POTTER, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 443.

No. 01–393. DUNAWAY *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1355.

No. 01–398. BARDES *v.* TODD. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 139 Ohio App. 3d 938, 746 N. E. 2d 229.

No. 01–402. GRENDELL ET AL. *v.* SUPREME COURT OF OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 252 F. 3d 828.

No. 01–406. VAN RIJK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 580.

No. 01–415. ELLIS *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 13 Fed. Appx. 963.

No. 01–425. NEW *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 95.

No. 01–5038. MASON *v.* NEW MEXICO DEPARTMENT OF LABOR ET AL. Ct. App. N. M. Certiorari denied.

No. 01–5119. LEDFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 494.

No. 01–5122. PETERSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 657, 543 S. E. 2d 692.

No. 01–5145. BREWER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 50 S. W. 3d 492.

No. 01–5170. REED *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5186. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 236 F. 3d 427.

No. 01–5192. MOTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 494.

No. 01–5207. STEPHENS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 237 F. 3d 1031.

No. 01–5331. BOTTOSON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 234 F. 3d 526.

No. 01–5332. SIMS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 45 S. W. 3d 1.

No. 01–5496. ENSIGN *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied.

No. 01–5497. STEWART *v.* AYRES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 623.

No. 01–5505. ANTONIO LUNA *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5514. DRAKE *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 01–5524. HOWARD *v.* CITY OF JERSEY CITY HOUSING AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 153.

No. 01–5528. GUERRERO FLORES *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5529. ROBLES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5530. SANDERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 815 So. 2d 590.

No. 01–5531. SPELLER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 01–5541. CARRELL *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5545. WALKER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5548. WASHINGTON *v.* ALLENDALE CORRECTIONAL INSTITUTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 246 F. 3d 671.

No. 01–5551. SORRELLS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5556. LOZANO *v.* RAMIREZ. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1360.

No. 01–5557. KULKA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–5559. CHOJNACKI *v.* MADDING, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5560. LAWSON *v.* NEWLAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5562. ATTERBERRY *v.* CHILDS, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY. C. A. 5th Cir. Certiorari denied.

No. 01–5563. RAFAELI *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 612.

No. 01–5564. WILLIAMS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5568. HENDRICKS *v.* SOUTH CAROLINA TITLE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 211.

No. 01–5570. CARMELL *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 26 S. W. 3d 726.

No. 01–5571. DAVIS *v.* KING ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1357.

No. 01–5573. McBRIDE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5574. DUNSIL *v.* RUSHTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 125.

No. 01–5575. MONTOYA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–5581. OGBUNUFAFOR *v.* NEW YORK STATE EDUCATION DEPARTMENT. Sup. Ct. N. Y., Albany County. Certiorari denied.

No. 01–5582. HAMILTON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5583. HAMPTON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5586. GARZA GARCIA *v.* LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 01–5587. HERNANDEZ *v.* RATELLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5588. HOLMES *v.* McGINNIS, SUPERINTENDENT, SOUTHPORT CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5589. HARMAN *v.* EMRICH. Ct. App. Ohio, Stark County. Certiorari denied.

No. 01–5590. FIORENTINO *v.* VANDERBILT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1164.

No. 01–5592. HARDWICK *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5594. GUERRERO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5600. TROIANO *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5601. WHITE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–5602. WELLS *v.* CHU. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 544.

No. 01–5603. ALLMOND *v.* GOTTLICK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 715.

No. 01–5604. BALLARD *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 98.

No. 01–5605. CLARK *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5608. CHANDLER *v.* CITY OF ALBUQUERQUE POLICE DEPARTMENT. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 797.

No. 01–5609. DAVIS *v.* XEROX CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 428.

No. 01–5613. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 76.

No. 01–5616. WRAY *v.* ROSS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 544.

No. 01–5618. RICE *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5619. STOKES *v.* DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 247 F. 3d 539.

No. 01–5622. DEBRUCE *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 01–5629. KONTAKIS *v.* MORTON ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5630. DAVIS *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 610.

No. 01–5632. CHAMBERLAIN *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 728.

No. 01–5636. KEE *v.* EQUIFAX SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 161.

No. 01–5637. LEE *v.* ROMINE. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 716.

No. 01–5641. LYNCH *v.* SHIELDS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5651. GARDNER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 809, 546 S. E. 2d 490.

No. 01–5658. D'AGOSTINO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5659. DOWNS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–5660. GUYTON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5662. ARANDA *v.* SHAW, DEPUTY SHERIFF, ET AL.; and ARANDA *v.* KEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 740.

No. 01–5664. EURY *v.* FIELDS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1134.

No. 01–5665. CUNNINGHAM *v.* NATIONAL BROADCASTING CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5667. CANTA *v.* HOLMES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5670. SINGSON *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5679. ROMANSKY *v.* FRANK, DEPUTY SUPERINTENDENT, FACILITY MANAGEMENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5681. ROJAS *v.* GARRAGHTY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 164.

No. 01–5682. MARQUEZ *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied.

No. 01–5683. BARRERA PADILLA *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 01–5687. VOHRA *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–5690. TROWBRIDGE *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 01–5691. PATTERSON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 742 N. E. 2d 4 and 744 N. E. 2d 945.

No. 01–5693. SHEARIN *v.* BOARD ON PROFESSIONAL RESPONSIBILITY OF THE SUPREME COURT OF DELAWARE. Sup. Ct. Del. Certiorari denied.

No. 01–5694. JOHNSON *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 234 F. 3d 1277.

No. 01–5697. O'NEILL *v.* BURKS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 407.

No. 01–5698. HAMMONDS *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5709. SULKEY *v.* BENNETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–5711. STROM *v.* CABLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5716. WILSON *v.* BOISE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–5717. WILLIAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–5719. NWANZE *v.* PHILIP MORRIS INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 6 Fed. Appx. 98.

No. 01–5723. DENARD *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–5726. CRADLE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–5727. PETTIJOHN *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5730. PEYER *v.* DUNCAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 791.

No. 01–5734. TRICARICO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 776 A. 2d 296.

No. 01–5735. WILKINSON *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 801.

No. 01–5736. VERA *v.* SUPERIOR COURT OF CALIFORNIA, TULARE COUNTY. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 01–5737. BOWMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5740. MORAN *v.* MEADOWS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–5742. THOMAS ET AL. *v.* MCGINNIS ET AL. Ct. App. Mich. Certiorari denied. Reported below: 239 Mich. App. 636, 609 N. W. 2d 222.

No. 01–5746. KELLY *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5750. GODFREY *v.* HOBBY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 898.

No. 01–5757. SMITH *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 797 So. 2d 503.

No. 01–5758. THOMPSON *v.* PRINCE GEORGE'S COUNTY, MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 01–5776. HOOKS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 19 P. 3d 294.

No. 01–5777. IN RE HOOK. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 390.

No. 01–5778. STANLEY *v.* ST. LOUIS UNIVERSITY. C. A. 8th Cir. Certiorari denied.

No. 01–5780. FORD *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5788. CHRISTIANSON *v.* ALLEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 438.

No. 01–5790. MARTIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1084.

No. 01–5792. ROSADO *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 434 Mass. 197, 747 N. E. 2d 156.

No. 01–5806. FREEMAN *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–5819. TRETIAK *v.* SECRETARY OF STATE OF NEVADA, SECURITIES DIVISION. Sup. Ct. Nev. Certiorari denied. Reported below: 117 Nev. 299, 22 P. 3d 1134.

No. 01–5830. AMRINE *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 238 F. 3d 1023.

No. 01–5831. MORALES ARREOLA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5843. DAVIDSON *v.* AMSOUTH BANK. C. A. 11th Cir. Certiorari denied.

No. 01–5856. O'NEILL *v.* FRANK ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–5865. BRACK *v.* OHIO. Ct. App. Ohio, Stark County. Certiorari denied.

No. 01–5876. WILLIAMS *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 456.

No. 01–5878. WILLIAMS *v.* JACKSON, SUPERINTENDENT, BROWN CREEK CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 221.

No. 01–5885. CHAVEZ *v.* CRAWFORD, DIRECTOR, NEVADA DEPARTMENT OF PRISONS. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 547.

No. 01–5894. MANNS *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 105.

No. 01–5898. JALOWIEC *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 220, 744 N. E. 2d 163.

No. 01–5901. POLK *v.* STEGALL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–5917. BUCKLEW *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 38 S. W. 3d 395.

No. 01–5921. WOODS *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 561, 23 P. 3d 1046.

No. 01–5936. FEURTADO *v.* MCNAIR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 113.

No. 01–5957. EATON *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 626 N. W. 2d 676.

No. 01–5967. TRAVIS *v.* OREGON BOARD OF PAROLE ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5981. HAMPEL ET VIR *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 238.

No. 01–5988. ANDERSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 792 So. 2d 456.

No. 01–5990. COLBERT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 43 S. W. 3d 777.

No. 01–6009. PERRY *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 13 Fed. Appx. 951.

No. 01–6017. CUMMINGS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 281, 543 S. E. 2d 849.

No. 01–6018. CLARK *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 780 So. 2d 184.

No. 01–6028. KEITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 84.

No. 01–6031. AMEZCUA-GARIBAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 936.

No. 01–6035. TAYBORN *v.* SCOTT, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 251 F. 3d 1125.

No. 01–6036. VAUGHN OWENS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–6041. MEADOWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6045. SINDRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 01–6055. WELLS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1084.

No. 01–6058. ARIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6060. VASQUEZ *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–6062. ROMERO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 751.

No. 01–6066. ALFARO-FRANCO *v.* UNITED STATES; BUENO-CASTRO *v.* UNITED STATES; CERVANTES *v.* UNITED STATES; FERRER-SANCHEZ, AKA FERRER *v.* UNITED STATES; HERNANDEZ-HERNANDEZ, AKA DOE *v.* UNITED STATES; MAURICIO ISAULA, AKA EVANGELISTA-TORRES *v.* UNITED STATES;

MAGALLON-GUERRERO *v.* UNITED STATES (Reported below: 10 Fed. Appx. 546); MARTINEZ MADRIGAL *v.* UNITED STATES; MORALES-PEREYRA *v.* UNITED STATES (15 Fed. Appx. 482); MOYA-AVILA, AKA VALENCIA MOYA *v.* UNITED STATES (15 Fed. Appx. 483); MOZQUEDA-PISANO *v.* UNITED STATES; PEREZ-RIOS *v.* UNITED STATES (14 Fed. Appx. 860); PRIETO-MOLINAR *v.* UNITED STATES (10 Fed. Appx. 551); REYES-BELTRAN, AKA REYES *v.* UNITED STATES; SALGADO-SARAVIA, AKA SALGADO SARABIA *v.* UNITED STATES; SORIANO-BONILLA *v.* UNITED STATES; VALASQUEZ-RIVERA *v.* UNITED STATES; and AGUIRRE-REA *v.* UNITED STATES (10 Fed. Appx. 591). C. A. 9th Cir. Certiorari denied.

No. 01–6069. ROJAS-ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6071. HE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 245 F. 3d 954.

No. 01–6072. CONTRERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 622.

No. 01–6074. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 255 F. 3d 288.

No. 01–6075. ALMANZA DE HOYOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6079. HOPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6081. BOGGAN *v.* MATRICIANO. C. A. 7th Cir. Certiorari denied.

No. 01–6086. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6087. HOLUB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6090. MONATH *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 42 S. W. 3d 644.

No. 01–6091. PALOMARES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 213.

No. 01–6092. JEFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 F. 3d 405.

No. 01–6094. BARNES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 251 F. 3d 251.

No. 01–6095. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6096. STORK ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 239 F. 3d 829.

No. 01–6097. QUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 417.

No. 01–6101. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6102. EPPINAL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6103. EL-GABROWNY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 23.

No. 01–6107. YANEZ-DOMINGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 555.

No. 01–6109. MARTINEZ-ZELAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6110. LOPEZ-QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 622.

No. 01–6114. CLINGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 254 F. 3d 624.

No. 01–6115. CAMACHO-JIMINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 814.

No. 01–6116. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1136.

No. 01–6118. PEASE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 938.

No. 01–6119. CAUSWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 80.

No. 01–6121. VILLA-LOZANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 574.

No. 01–6122. TORRES-GALEAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 748.

No. 01–6123. WILDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 297.

No. 01–6125. MARAVILLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 6 Fed. Appx. 32.

No. 01–6126. HOWARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–6131. SEWELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 252 F. 3d 647.

No. 01–6133. HAMBRICK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 222.

No. 01–6134. HOLLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 625.

No. 01–6135. HIGUERA-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 550.

No. 01–6136. GREEN ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 377.

No. 01–6138. GUILLEN-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 622.

No. 01–6143. SPEER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6145. QUARTERMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1361.

No. 01–6154. DIKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–6155. LOVING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 71.

No. 01–6157. BURGESS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 706.

No. 01–6163. HAYDEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 768.

No. 01–6164. HUNT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 279.

No. 01–6166. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 181.

No. 01–6168. BLAIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 592.

No. 01–6169. VARGAS-DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6170. VASQUEZ-REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 415.

No. 01–6171. KORMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 12 Fed. Appx. 66.

No. 01–6173. KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–6175. PERALTA-MORAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 668.

No. 01–6184. WALKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 502.

No. 01–6189. LUNA-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 638.

No. 01–6192. VALDEZ-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 161.

No. 01–6193. VAN RIPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1147.

No. 01–6207. GRAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1063.

No. 01–6210. CHAVARRIA-PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–6211. DAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 956.

No. 00–1742. ABDUR'RAHMAN *v.* BELL, WARDEN. C. A. 6th Cir. Motion of respondent to strike portions of the brief, as *amici curiae*, of the National Mental Health Association et al. denied. Certiorari denied. Reported below: 226 F. 3d 696.

No. 00–9744. HOSKINS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. JUSTICE BREYER would grant the petition for writ of certiorari limited to Question 1 presented by the petition. Reported below: 199 Ariz. 127, 14 P. 3d 997.

No. 01–164. NATIONAL RAILROAD PASSENGER CORPORATION *v.* GRIESSER. Super. Ct. Pa. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 761 A. 2d 606.

No. 01–5688. WASHINGTON *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 00–9632. IN RE PARNELL, 533 U. S. 948. Petition for rehearing denied.

OCTOBER 15, 2001

Certiorari Dismissed

No. 01–5846. SALLEE *v.* MENDEZ, WARDEN. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein. Reported below: 250 F. 3d 736.

Miscellaneous Orders

No. 01M17. GLASS *v.* GARCIA, WARDEN;

No. 01M20. DAVIS *v.* PEE DEE COALITION AGAINST DOMESTIC AND SEXUAL ASSAULT ET AL.; and

No. 01M21. OREGON STEEL MILLS, INC. *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 48 ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 01M18. BUTLER *v.* WEST VIRGINIA ET AL. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $2,970.18 for the period April 1 through June 30, 2001, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 533 U. S. 946.]

No. 01–6209. GROEBER *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 5, 2001, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 01–471. IN RE GUERIN; and

No. 01–6353. IN RE DANIELS. Petitions for writs of habeas corpus denied.

No. 01–5816. IN RE WILLIAMSON; and

No. 01–5952. IN RE JOHNSON. Petitions for writs of mandamus denied.

Certiorari Granted

No. 00–1737. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., ET AL. *v.* VILLAGE OF STRATTON ET AL. C. A. 6th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 240 F. 3d 553.

No. 01–46. FEDERAL MARITIME COMMISSION *v.* SOUTH CAROLINA STATE PORTS AUTHORITY ET AL. C. A. 4th Cir. Motions of United States Maritime Alliance Limited et al. and National Association of Waterfront Employers for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 243 F. 3d 165.

No. 01–301. NEWLAND, WARDEN *v.* SAFFOLD. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 250 F. 3d 1262.

Certiorari Denied

No. 00–9722. HALL *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 194 Ill. 2d 305, 743 N. E. 2d 521.

No. 00–10149. YUNG-MING CHEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 1143.

No. 00–10231. CRAWFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 239 F. 3d 1086.

No. 00–10373. MARTIN *v.* UNITED STATES; and
No. 00–10664. HAMILTON, AKA BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 174.

No. 00–10604. ROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 375.

No. 00–10760. HOLBERG, AKA JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 38 S. W. 3d 137.

No. 01–40. COLWELL *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 634, 544 S. E. 2d 120.

No. 01–62. COX ET AL. *v.* CITY OF WICHITA FALLS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 700.

No. 01–77. HETREED *v.* ALLSTATE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 397.

No. 01–86. SLINGER DRAINAGE *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 237 F. 3d 681.

No. 01–167. JACKSON ET UX. *v.* WEST TELEMARKETING CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 245 F. 3d 518.

No. 01–253. ORR ET AL. *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 389, 745 N. E. 2d 1036.

No. 01–271. NORTHWEST VILLAGE LIMITED PARTNERSHIP ET AL. *v.* FRANKE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 241 F. 3d 1005.

No. 01–272. SIMON *v.* BELWITH INTERNATIONAL, INC., EMPLOYEE BENEFIT PLAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 363.

No. 01–279. LECHUZA VILLAS WEST *v.* CALIFORNIA STATE LANDS COMMISSION ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–288. LAS VEGAS SANDS, INC., DBA SANDS HOTEL CASINO *v.* LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 244 F. 3d 1152.

No. 01–308. GADDINI *v.* BONOMI. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 832.

No. 01–310. HILL *v.* CLINTON, FORMER PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–320. KELLER *v.* LARKINS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 408.

No. 01–322. ZIEGLER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 821 So. 2d 1029.

No. 01–364. MERMELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 01–379. KENTUCKY, NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, SECRETARY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 252 F. 3d 816.

No. 01–410. FOREHAND *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 01–440. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 461.

No. 01–447. DUNGAN *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 252 F. 3d 670.

No. 01–461. ECHOLS *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 22.

No. 01–467. GILCHRIST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–481. LOE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 449.

No. 01–5257. SANDERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–5355. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–5759. BRADSHAW *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 01–5764. MCCOY *v.* LOUISIANA. 4th Jud. Dist. Ct. La., Ouachita Parish. Certiorari denied.

No. 01–5765. MCKINNEY *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5774. PATTERSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–5775. ORDONEZ *v.* TAFOYA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 669.

No. 01–5779. PIKE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 01–5781. HIDALGO *v.* RICE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5784. JARRELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5785. JACKS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 1524, 747 N. E. 2d 250.

No. 01–5789. JONES *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5791. BATDORF *v.* CITY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 655.

No. 01–5793. AIMES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5794. PETER L. *v.* ROLLINS. Sup. Ct. N. H. Certiorari denied.

No. 01–5797. HARRISON *v.* OMOHUNDRO ET AL. Ct. App. Tenn. Certiorari denied.

No. 01–5801. GUERRERO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5802. GILES *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 792 So. 2d 469.

No. 01–5803. GRAYS *v.* SANDY ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5805. FORREST *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–5808. MARVIN *v.* BIGGER ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 96 N. Y. 2d 896, 756 N. E. 2d 77.

No. 01–5810. LAMB *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied.

No. 01–5811. CURRY *v.* JOHNSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1355.

No. 01–5818. ARNOLD *v.* WOOD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 238 F. 3d 992.

No. 01–5824. VERA *v.* MARTIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 705.

No. 01–5825. VAUGHN, INDIVIDUALLY AND AS NEXT FRIEND OF WASSING *v.* VAUGHN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 328.

No. 01–5840. SCOVELL *v.* DEPARTMENT OF CHILDREN AND FAMILY SERVICES, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5841. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 782 So. 2d 882.

No. 01–5842. RAMOS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5847. SMITH *v.* GOMEZ. C. A. 9th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 460.

No. 01–5850. COMPO *v.* MOODY ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5852. LYONS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 39 S. W. 3d 32.

No. 01–5855. TAYLOR *v.* ADE ET UX. Ct. App. Kan. Certiorari denied. Reported below: 28 Kan. App. 2d 712, 21 P. 3d 581.

No. 01–5857. PEREZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 442.

No. 01–5862. SILVERA *v.* ORANGE COUNTY SCHOOL BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 1253.

No. 01–5864. SANCHEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5870. BAEZ *v.* KNOWLES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1360.

No. 01–5873. ZACHARIE *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5874. TOLLIVER *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5877. ZESSMAN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 01–5879. WINDES *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 01–5880. AGOR *v.* DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT. Ct. App. D. C. Certiorari denied.

No. 01–5882. NEWSOME *v.* ENTERGY SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 706.

No. 01–5891. JUPITER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 309.

No. 01–5907. SHULER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 344 S. C. 604, 545 S. E. 2d 805.

No. 01–5912. BAUMHOFER *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied.

No. 01–5915. OZUNO-RAMIREZ *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 746, 545 S. E. 2d 911.

No. 01–5931. WRIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 757 A. 2d 999.

No. 01–5945. PRICE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 01–5956. EAGLE *v.* WELLS, SHERIFF, MANATEE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5976. RENE *v.* NORTON CO. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1147.

No. 01–5977. SEVERN *v.* WEST VIRGINIA. Cir. Ct. Putnam County, W. Va. Certiorari denied.

No. 01–5993. LARRIMORE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–5996. FORT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 475.

No. 01–6000. COLEMAN *v.* MITCHELL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 244 F. 3d 533.

No. 01–6046. DODSON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 01–6053. VILLAR-GRANA *v.* VENTURELLA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–6078. GARIBAY *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 789.

No. 01–6083. GLASS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 821 So. 2d 1045.

No. 01–6088. KOSTZUTA *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 810.

No. 01–6093. TAYLOR *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 63 Conn. App. 386, 776 A. 2d 1154.

No. 01–6105. PATTERSON *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 770.

No. 01–6128. DILLARD *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 319 Ill. App. 3d 102, 745 N. E. 2d 185.

No. 01–6130. CHRISTESON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 50 S. W. 3d 251.

No. 01–6165. FERNANDEZ *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 01–6176. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 01–6178. MASON *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6179. KELLY *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6181. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–6183. THOMPSON *v.* CASTRO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6185. WEST *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6190. WALTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1137.

No. 01–6196. BOWERS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 48 S. W. 3d 710.

No. 01–6197. REID *v.* HUTCHINSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 67.

No. 01–6200. SCOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 286.

No. 01–6201. SESMA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 253 F. 3d 403.

No. 01–6202. SANDOVAL-BARAJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 622.

No. 01–6205. GRAHAM *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 567.

No. 01–6208. FORTIER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 1224.

No. 01–6216. CELESTINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063.

No. 01–6220. MONROE, AKA MONROE-BEY *v.* HUTCHINSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1135.

No. 01–6222. DE LA ROSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–6223. HUNT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6224. HERNANDEZ-LEON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 608.

No. 01–6226. VALDEZ-TRUJILLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 551.

No. 01–6227. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–6228. TURRUBIARTES-GONZALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6230. MENDOZA-MALDONADO *v.* UNITED STATES; and PALACIOS-PORTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 166.

No. 01–6231. LUEVANO-VELA, AKA VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 161.

No. 01–6235. MIRANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 434.

No. 01–6239. LOPEZ-PRADO *v.* UNITED STATES; GARCIA-ZAVALA *v.* UNITED STATES; and GUERRERO-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6243. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6244. POLLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 738.

No. 01–6245. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–6246. COLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–6247. BRAGAN *v.* POINDEXTER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 476.

No. 01–6255. HAMILTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 696.

No. 01–6259. BURTON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 328.

No. 01–6271. ROCKMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 168.

No. 01–6272. SANCHEZ-MUNOZ *v.* UNITED STATES; MARTINEZ-CALDERON *v.* UNITED STATES; MARTINEZ-ARAMBULA *v.* UNITED STATES; and MUNOZ-PATLAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164 (third judgment) and 165 (first, second, and fourth judgments).

No. 01–6275. REED *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 762.

No. 01–6276. CAMACHO-VELASQUEZ *v.* UNITED STATES (Reported below: 263 F. 3d 165); CHAVEZ-GARCIA *v.* UNITED STATES (263 F. 3d 165); ESPINDOLA-ARMANZA *v.* UNITED STATES (263 F. 3d 165); GONZALEZ-GRANADOS *v.* UNITED STATES (263 F. 3d 166); IBARRA-CRUZ *v.* UNITED STATES (263 F. 3d 166); JARAMILLO-MENDEZ *v.* UNITED STATES (263 F. 3d 165); LOPEZ-ALCANTARA *v.* UNITED STATES (263 F. 3d 166); MARTINEZ-MIJAREZ *v.* UNITED STATES (263 F. 3d 165); PENUELAS-MONTOYA *v.* UNITED STATES (263 F. 3d 165); and SAVEDRA-CARBAJAL *v.* UNITED STATES (263 F. 3d 165). C. A. 5th Cir. Certiorari denied.

No. 01–6282. LAYDEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 392.

No. 01–6284. LUNA-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6290. PHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 778.

No. 01–6291. MOLIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1286.

No. 01–6292. PARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 700.

No. 01–6293. CASTILLO-OCON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6294. ESPINAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–6296. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 258 F. 3d 669.

No. 01–6301. RIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6304. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 248 F. 3d 506.

No. 01–6306. WARREN *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–6310. MOTA, AKA VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 Fed. Appx. 61.

No. 01–6313. RIVERA-RUIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 244 F. 3d 263.

No. 01–6317. RAMIREZ-FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 170.

No. 01–6319. REZA-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6320. STANFIEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 691.

No. 01–6324. GRAVES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 384.

No. 01–6325. FARLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 767 A. 2d 225.

No. 01–6326. GILLETTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 1032.

No. 01–6327. MORELOCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–6330. BONAPARTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–6332. PRUITT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6337. TORRES-ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6338. SANCHEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6370. RICHARDS *v.* SONDALLE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 360.

No. 00–9769. OVERTON *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

Statement of JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE O'CONNOR, and JUSTICE SOUTER join, respecting the denial of the petition for writ of certiorari.

An Ohio court convicted Desarie Overton of a drug crime. She sought to suppress key evidence—the drugs—on the ground that

the police, when seizing the drugs, were acting pursuant to an arrest warrant that "was not based on probable cause." No. L–99–1317, 2000 WL 1232422, *2 (Ohio App. Lucas County, Sept. 1, 2000). The Ohio Court of Appeals rejected Overton's claim, and the Supreme Court of Ohio dismissed her appeal. She now seeks certiorari. She says that the Toledo police simply inserted her name and address into a previously prepared "form complaint" or affidavit which contained a general description of the crime; and that they submitted this "form complaint" to the Magistrate as the sole evidence supporting the issuance of the warrant. She argues that the warrant therefore failed to meet minimal constitutional standards. I agree with Overton and would summarily reverse the judgment below on the ground that the warrant is clearly inadequate under well-established Supreme Court case law.

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const., Amdt. 4. The probable-cause determination must be made by a neutral magistrate in order "to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause." *Wong Sun* v. *United States*, 371 U. S. 471, 481–482 (1963).

As far as the record before us reveals, the only evidence in this case offered to the Magistrate to show "probable cause" for issuing the warrant consisted of a "complaint" presented to the Magistrate, signed by Detective Andre Woodson. That complaint sets forth Overton's name, the date of the offense, the name of the offense ("permitting drug abuse"), and the statutory reference. It further reads:

> "[T]he defendant, being the owner, lessee, or occupant of certain premises, did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to-wit: **Desarie Overton** being the lessee, owner, or occupant of **620 Belmont, Toledo, Ohio 43607,** knowingly permitted Cocaine, a Schedule Two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised Code, a felony drug abuse offense. This

offense occurred in Toledo, Lucas County, Ohio." Appendix, *infra.*

This "complaint" sets forth the relevant crime in general terms, it refers to Overton, and it says she committed the crime. But nowhere does it indicate *how Detective Woodson knows, or why he believes, that Overton committed the crime.*

This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. In *Giordenello* v. *United States,* 357 U. S. 480, 486 (1958), which involved a federal prosecution, the Court found that a complaint identical in all material respects to the one before us failed to meet the "probable cause" requirement contained in Rule 4 of the Federal Rules of Criminal Procedure because it contained "no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein," failed to "indicate any sources for the complainant's belief," and neglected to "set forth any other sufficient basis upon which a finding of probable cause could be made." For those reasons, the Magistrate could not "assess independently the probability that [the] petitioner committed the crime charged." 357 U. S., at 487.

Subsequently, in *Aguilar* v. *Texas,* 378 U. S. 108, 112, n. 3 (1964) (abrogated on other grounds by *Illinois* v. *Gates,* 462 U. S. 213, 230 (1983)), which involved a state prosecution, the Court noted that *Giordenello* had construed Rule 4's "probable cause" requirement "'in light of the constitutional' requirement of probable cause which that Rule implements." And it added that the "principles announced in *Giordenello* derived, therefore, from the Fourth Amendment, and not from our supervisory power." 378 U. S., at 112, n. 3.

Then, in *Whiteley* v. *Warden, Wyo. State Penitentiary,* 401 U. S. 560 (1971), which also involved a state prosecution, the Court again considered a complaint similar to the one before us. That complaint said:

> "I, C. W. Ogburn, do solemnly swear that on or about the 23 day of November, A. D. 1964, in the County of Carbon and State of Wyoming, the said Harold Whiteley and Jack Daley, defendants did then and there unlawfully break and enter a locked and sealed building [describing the location and own-

ership of the building]." *Id.*, at 563 (alteration in original) (internal quotation marks omitted).

The Court, citing *Giordenello* and *Aguilar*, wrote that the

> "decisions of this Court *concerning Fourth Amendment probable-cause requirements* before a warrant for either arrest or search can issue require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant." 401 U. S., at 564 (emphasis added).

The Court added:

> "In the instant case—so far as the record stipulated to by the parties reveals—the sole support for the arrest warrant issued at Sheriff Ogburn's request was the complaint reproduced above. That complaint consists of nothing more than the complainant's conclusion that the individuals named therein perpetrated the offense described in the complaint." *Id.*, at 564–565 (footnotes omitted).

The Court went on to conclude that "the complaint on which the warrant issued here clearly could not support a finding of probable cause by the issuing magistrate." *Id.*, at 568.

I can find no relevant difference between the complaint before us and the one at issue in *Whiteley*. And *Whiteley* is clearly controlling on this point. *Arizona* v. *Evans*, 514 U. S. 1, 13 (1995) (casting doubt on *Whiteley*'s exclusionary rule discussion but stating that "*Whiteley* clearly retains relevance in determining whether police officers have violated the Fourth Amendment . . ."). Nor can I find any basis, on the papers before us, to conclude that the evidence was admissible *despite* the inadequacy of the arrest warrant.

I consequently conclude that the city of Toledo clearly violated the Fourth Amendment warrant requirement. Because the Court already has answered directly the basic legal question presented in this case, I would not grant certiorari for the purpose of hearing that question argued once again. I would, however, summarily reverse the decision below. I realize that we cannot act as a court of simple error correction and that the unpublished intermediate court decision below lacks significant value as precedent. Nonetheless, the matter has a general aspect. The highlighted print on the complaint, see *supra*, at 983, offers some

support for Overton's claims that the "complaint" is a form that the police filled in with her name and address. And that fact, if true, helps to support her claim that her case is not unique. That possibility, along with the clarity of the constitutional error, convinces me that the appropriate disposition of this case is a summary reversal.

APPENDIX TO STATEMENT OF BREYER, J.

AUG - 7 1998

8082

Case No.

STATE OF OHIO / CITY OF TOLEDO
vs.
Desarie Overton
Name
2742 Glenwood
Address
Toledo, Ohio 43610
City State Zip
☐ TMC ☐ ORC R.B. No. 04990698
Code No. 2925.13
Charge: Permitting Drug Abuse
Classification: M-1

THE TOLEDO MUNICIPAL COURT
TOLEDO, LUCAS COUNTY, OHIO
Warrant To Issue
COMPLAINT WARRANT ISSUED
(Crim. R. 3 and 4)
Rac B Sex F Hgt 5'02" Wgt 160
Hai Blk Eye Bro DOB 04-18-60
Soc 299-64-4714 Pkt
RID 03726666
BCI FBI
Alias

Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 1998 did violate ☐ TMC (or) ☒ ORC # 2925.13 constituting a charge of Permitting Drug Abuse in that the defendant, being the owner, lessee, or occupant of certain premises did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to-wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowingly permitted Cocaine, a Schedule II Controlled Substance to be sold and possessed in his occupants there, both being in violation of the Ohio Revised Code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio

Sworn to and subscribed before me by Det. Andr. Woodson #1999
on 8-2 1998.
Signature
Det. A. Woodson #1999
Complainant's Name
525 N. Erie St.
Address

CERTIFICATE
I certify that this is a true copy of the original writ and of the endorsement thereon.

Judge / Clerk / Deputy Clerk
The Toledo Municipal Court

No. 01–71. HONEYWELL, INC., ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 235 F. 3d 244.

OCTOBER 16, 2001

Certiorari Denied

No. 01–6728 (01A331). BECK *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 261 F. 3d 377.

OCTOBER 17, 2001

Miscellaneous Order

No. 01–6772 (01A323). IN RE HALE. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied. Motion for discovery denied. Petition for writ of habeas corpus denied.

OCTOBER 18, 2001

Miscellaneous Order

No. 00–1214. ALABAMA *v.* SHELTON. Sup. Ct. Ala. [Certiorari granted, 532 U. S. 1018.] Case removed from November 2001 Argument Calendar. Charles Fried, Esq., of Cambridge, Mass., is invited to file a brief and to argue, as *amicus curiae*, in opposition to the judgment below and in support of the following position: Where counsel is not afforded to an indigent defendant, the Constitution of the United States does not bar the imposition of a suspended or probationary sentence upon conviction of a misdemeanor, even though the defendant might be incarcerated in the event probation is revoked. Brief as *amicus curiae* is to be filed with the Clerk and served upon the parties on or before 3 p.m., Monday, December 10, 2001. Any response by the parties may be filed with the Clerk and served upon opposing parties and *amicus curiae* on or before 3 p.m., Friday, January 11, 2002. This Court's Rule 29.2 is suspended in this case. Ten minutes of petitioner's time are allotted to Mr. Fried for oral argument.

OCTOBER 22, 2001

Certiorari Denied

No. 01–6884 (01A348). MITCHELL *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 23, 2001

Certiorari Denied

No. 01–6979 (01A362). JOHNS *v.* MISSOURI. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

No. 01–6980 (01A364). JOHNS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 25, 2001

Miscellaneous Order

No. 01–7018 (01A368). IN RE MINCEY. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

Certiorari Denied

No. 01–7014 (01A366). MINCEY *v.* HEAD, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

No. 01–7015 (01A367). MINCEY *v.* GEORGIA STATE BOARD OF PARDONS AND PAROLES ET AL. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 29, 2001

Certiorari Dismissed

No. 01–5938. WASHINGTON *v.* CITY OF LAKE CHARLES ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 273 F. 3d 392.

No. 01–6295. MULAZIM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2275. IN RE DISCIPLINE OF WRIGHT. Edward L. Wright, Jr., of Little Rock, Ark., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2276. IN RE DISCIPLINE OF MERRIWETHER. Keith M. Merriwether III, of Mineola, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2277. IN RE DISCIPLINE OF DONOVAN. Thomas Francis Donovan, of Fayetteville, Ark., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2278. IN RE DISCIPLINE OF NAPOLITANO. John J. Napolitano, of Oyster Bay Cove, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2279. IN RE DISCIPLINE OF GADYE. Ross M. Gadye, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2280. IN RE DISCIPLINE OF LIGHT. Kenneth J. Light, of South Bend, Ind., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2281. IN RE DISCIPLINE OF HYDE. Robert Reginald Hyde, of Oriental, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 01M22. ANONYMOUS *v.* COMMITTEE ON CHARACTER AND FITNESS. Motion for leave to file petition for writ of certiorari under a pseudonym denied.

No. 01M23. DUNCAN *v.* VIRGINIA ET AL.; and

No. 01M24. FAMANIA *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 00–853. PORTER ET AL. *v.* NUSSLE. C. A. 2d Cir. [Certiorari granted, 532 U. S. 1065.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–878. MATHIAS ET AL. *v.* WORLDCOM TECHNOLOGIES, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 532 U. S. 903.] Motion of the United States for divided argument granted. Motion of respondents WorldCom Technologies, Inc., et al. for additional time for oral argument and for divided argument denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 00–1167. TAHOE-SIERRA PRESERVATION COUNCIL, INC., ET AL. *v.* TAHOE REGIONAL PLANNING AGENCY ET AL. C. A. 9th Cir. [Certiorari granted, 533 U. S. 948.] Motion of American Association of Small Property Owners et al. for leave to file a brief as *amici curiae* granted.

No. 00–1214. ALABAMA *v.* SHELTON. Sup. Ct. Ala. [Certiorari granted, 532 U. S. 1018.] Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted.

No. 00–1514. RAYGOR ET AL. *v.* REGENTS OF THE UNIVERSITY OF MINNESOTA ET AL. Sup. Ct. Minn. [Certiorari granted, 532

U. S. 1065.] Motion of the Solicitor General for divided argument granted.

No. 00–8452. ATKINS *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, 533 U. S. 976 and *ante*, p. 809.] Motion of respondent to dismiss the writ of certiorari as improvidently granted denied.

No. 01–628. LANTZ *v.* BANKS, CLERK, CITY OF SOUTHFIELD. Ct. App. Mich. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 01–6545. IN RE ANDREWS. Petition for writ of habeas corpus denied.

No. 01–6689. IN RE NORTHINGTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 01–6063. IN RE BUTCHER. Petition for writ of mandamus denied.

No. 01–5362. IN RE AWOFOLU. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–5964. IN RE JOHNSON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus and/or prohibition dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 00–1406. CHEVRON U. S. A. INC. *v.* ECHAZABAL. C. A. 9th Cir. Certiorari granted. Reported below: 226 F. 3d 1063.

No. 01–298. LAPIDES *v.* BOARD OF REGENTS OF UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 251 F. 3d 1372.

No. 01–344. THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* WESTERN STATES MEDICAL CENTER ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 238 F. 3d 1090.

Certiorari Denied

No. 00–1747. WEST INDIES TRANSPORT CO., INC., ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 251 F. 3d 155.

No. 00–1920. DEERBROOK PAVILION *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 235 F. 3d 1100.

No. 00–9757. CHANTHADARA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 230 F. 3d 1237.

No. 00–10384. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 00–10607. SOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 434.

No. 00–10695. ANGERAMI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 140.

No. 01–92. PETROCHEM INSULATION, INC. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 240 F. 3d 26.

No. 01–94. SCHAFFER, MEMBER OF CONGRESS *v.* O'NEILL, SECRETARY OF THE TREASURY. C. A. 10th Cir. Certiorari denied. Reported below: 240 F. 3d 878.

No. 01–107. ULYSSES I & CO., INC. *v.* MORTON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 11 Fed. Appx. 14.

No. 01–123. JSG TRADING CORP. *v.* DEPARTMENT OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 235 F. 3d 608.

No. 01–128. CALIFORNIA ET AL. *v.* SCHULMAN, CHAPTER 7 TRUSTEE. C. A. 9th Cir. Certiorari denied. Reported below: 237 F. 3d 967.

No. 01–135. REINISH ET UX. *v.* CLARK, TAX COLLECTOR, PALM BEACH COUNTY, ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 765 So. 2d 197.

No. 01–152. ALLSTATE INSURANCE CO. *v.* HOWERY. C. A. 5th Cir. Certiorari denied. Reported below: 243 F. 3d 912.

No. 01–178. TRIGEN-OKLAHOMA CITY ENERGY CORP. *v.* OKLAHOMA GAS & ELECTRIC CO. C. A. 10th Cir. Certiorari denied. Reported below: 244 F. 3d 1220.

No. 01–183. STEVENSON *v.* DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 248 F. 3d 1187.

No. 01–202. BRYANT ET UX., INDIVIDUALLY AND AS GUARDIANS AD LITEM FOR CHRYSTAL R. ET AL. *v.* DELHAIZE AMERICA, INC., FKA FOOD LION INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 194.

No. 01–229. GREAT LAKES DREDGE & DOCK CO. *v.* BEYEL BROTHERS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 162.

No. 01–241. FALLON *v.* MISSOURI BOARD OF REGISTRATION FOR THE HEALING ARTS. Sup. Ct. Mo. Certiorari denied. Reported below: 41 S. W. 3d 474.

No. 01–276. EZZO'S INVESTMENTS, INC. *v.* ROYAL BEAUTY SUPPLY, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 243 F. 3d 980.

No. 01–277. LEVERETTE *v.* BELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 237 F. 3d 160.

No. 01–278. ABDU-BRISSON ET AL. *v.* DELTA AIRLINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 239 F. 3d 456.

No. 01–284. HOLLANDER *v.* AMERICAN CYANAMID CO. C. A. 2d Cir. Certiorari denied.

No. 01–292. REN LABORATORIES OF FLORIDA, INC. *v.* WEISS; and

No. 01–317. WEISS *v.* REN LABORATORIES OF FLORIDA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 161.

No. 01–300. MENOR *v.* FINANCE FACTORS, LTD. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 571.

No. 01–304. TITAN INTERNATIONAL, INC., ET AL. *v.* BEVER. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 401.

No. 01–314. BARRINGTON *v.* ERMINE. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 636, 23 P. 3d 492.

No. 01–315. MCAFEE *v.* TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 01–316. PAYNE *v.* MILWAUKEE COUNTY ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–321. TILLEY *v.* TOWN OF ABERDEEN, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 163.

No. 01–323. WINKER *v.* MCDONNELL DOUGLAS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 540.

No. 01–325. AMERICAN ELECTRIC POWER FUEL SUPPLY, INC., ET AL. *v.* PERKINS. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 593.

No. 01–329. KENDRICK ET AL. *v.* AMERICAN AMUSEMENT MACHINE ASSN. C. A. 7th Cir. Certiorari denied. Reported below: 244 F. 3d 572.

No. 01–333. COOK ET AL. *v.* BACA, MAYOR OF THE CITY OF ALBUQUERQUE, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 640.

No. 01–334. HUNTINGTON NATIONAL BANK ET AL. *v.* MINNESOTA HOTEL CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 669.

No. 01–337. TAYLOR *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 565 Pa. 140, 771 A. 2d 1261.

No. 01–338. REPUBLIC OF GUATEMALA ET AL. *v.* TOBACCO INSTITUTE, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 249 F. 3d 1068.

No. 01–340. RAMBO *v.* DELTA FAMILY-CARE DISABILITY SURVIVORSHIP PLAN. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 579.

No. 01–342. REYES-GAONA *v.* NORTH CAROLINA GROWERS ASSN., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 250 F. 3d 861.

No. 01–345. THURSTON *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 42 S. W. 3d 843.

No. 01–346. VACANCES HELIADES S. A. ET AL. *v.* AAR INTERNATIONAL, INC. C. A. 7th Cir. Certiorari denied. Reported below: 250 F. 3d 510.

No. 01–348. CARRABBA ET AL. *v.* RANDALLS FOOD MARKETS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 721.

No. 01–349. GRAVER ET AL. *v.* MONSANTO CO. ET AL. Ct. App. La., 5th Cir. Certiorari denied.

No. 01–353. AUDAIN *v.* AMERICAN UNIVERSITY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–356. DEAN *v.* CHASE MANHATTAN MORTGAGE CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 170.

No. 01–357. BERNARD EGAN & CO. ET AL. *v.* FLORIDA DEPARTMENT OF REVENUE. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 769 So. 2d 1060.

No. 01–359. SAFRIT *v.* CONE MILLS CORP. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 306.

No. 01–360. SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, LOUISIANA CHAPTER, ET AL. *v.* SUPREME COURT OF LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 781.

No. 01–361. HARRIS *v.* CITY OF DORAVILLE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 01–365. CHICAGO FIRE FIGHTERS UNION LOCAL 2 ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 249 F. 3d 649.

No. 01–371. REVOCABLE INTER VIVOS TRUST OF MABEL MARIE GRIFFIN ET AL. *v.* GRIFFIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 652.

No. 01–380. KIM *v.* PACIFIC BELL. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 768.

No. 01–384. BROWN ET AL. *v.* GILMORE, GOVERNOR OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 258 F. 3d 265.

No. 01–386. WINTERS *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 170 Ore. App. 118, 10 P. 3d 961.

No. 01–392. BRUNDIDGE *v.* BRUNDIDGE. Sup. Ct. Va. Certiorari denied.

No. 01–401. GILCHRIST *v.* SUPREME COURT OF ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 468.

No. 01–405. COLE *v.* DOC'S DRUGS, LTD. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–412. REIMAN *v.* DAVIS, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–414. TILLISON *v.* INVISIBLE, INC. Ct. App. Colo. Certiorari denied.

No. 01–438. CONSTANT *v.* PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 10 Fed. Appx. 898.

No. 01–442. RYLANDER, COMPTROLLER OF PUBLIC ACCOUNTS OF TEXAS, ET AL. *v.* DOW CHEMICAL CO. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 38 S. W. 3d 741.

No. 01–451. MCDONALD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 173.

No. 01–454. PRICER *v.* MAGGIORE. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 733.

No. 01–457. REACH *v.* ALLIEDSIGNAL, INC. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 445.

No. 01–460. CAMDEN PROPERTIES CORP. ET AL. *v.* HURT. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 616.

No. 01–466. GARCIA *v.* EATON RAPIDS BOARD OF EDUCATION. Ct. App. Mich. Certiorari denied.

No. 01–469. HECKEL *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 824, 24 P. 3d 404.

No. 01–472. FOXX *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–478. POSTLEWAITE *v.* MCGRAW-HILL, INC. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 16.

No. 01–483. HOWARD *v.* NEW YORK TIMES CO. C. A. 2d Cir. Certiorari denied. Reported below: 10 Fed. Appx. 7.

No. 01–484. GOONAN *v.* KANE ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–486. HERITAGE BANK, FKA BRAZOS BANK NA *v.* REDCOM LABORATORIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 319.

No. 01–497. LAWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 350.

No. 01–501. ASSENATO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–503. WELLS ET AL. *v.* CITY AND COUNTY OF DENVER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 257 F. 3d 1132.

No. 01–504. TROCHMANN *v.* MUSSELSHELL COUNTY, MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 630.

No. 01–509. HUMMEL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 776 A. 2d 291.

No. 01–513. RATH *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 46 S. W. 3d 604.

No. 01–515. SEGUI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–530. GREEN *v.* UNITED STATES (Reported below: 55 M. J. 76); BARNES *v.* UNITED STATES (55 M. J. 236); MAGYARI *v.* UNITED STATES (55 M. J. 358); MAHONEY *v.* UNITED STATES (55 M. J. 358); MEADOR *v.* UNITED STATES (55 M. J. 357); POWE *v.* UNITED STATES (55 M. J. 359); RYAN *v.* UNITED STATES (55 M. J. 359); SHELHART *v.* UNITED STATES (55 M. J. 359); STARK *v.* UNITED STATES (55 M. J. 358); and STERNE *v.* UNITED STATES (55 M. J. 359). C. A. Armed Forces. Certiorari denied.

No. 01–533. BENAVIDEZ *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 241 F. 3d 1370.

No. 01–553. RICHARDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 12 Fed. Appx. 91.

No. 01–558. TANNER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 357.

No. 01–564. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 331.

No. 01–567. FAVELA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 247 F. 3d 838.

No. 01–5046. MONTOYA *v.* ROMERO, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 649.

No. 01–5209. STOUT *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 46 S. W. 3d 689.

No. 01–5363. ROBINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5536. HAIGHT *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 41 S. W. 3d 436.

No. 01–5549. VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 30.

No. 01–5889. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 11th Cir. Certiorari denied.

No. 01–5899. MALVIA *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 783.

No. 01–5900. LEWIS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5902. LOPEZ MUNGUIA *v.* LOS ANGELES COUNTY SUPERIOR COURT ET AL. Sup. Ct. Cal. Certiorari denied.

No. 01–5904. GOLDSTEIN *v.* PENNSYLVANIA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Sup. Ct. Pa. Certiorari denied. Reported below: 566 Pa. 670, 782 A. 2d 549.

No. 01–5911. RICKS *v.* LANSING, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 235.

No. 01–5913. BELTON *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–5914. ARANDA *v.* CASON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–5916. PEMRICH *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 01–5918. DEDOBEAU *v.* TERHUNE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 715.

No. 01–5920. SMITH *v.* ALLIED SYSTEMS. C. A. 4th Cir. Certiorari denied. Reported below: 232 F. 3d 889.

No. 01–5929. LEWIS *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 12.

No. 01–5930. LUKENS *v.* COOK, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–5932. THOMAS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1147.

No. 01–5933. WORD *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–5939. BISHOP *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 807.

No. 01–5953. TEZENO *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 771 So. 2d 324.

No. 01–5959. LUCKY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1099.

No. 01–5963. NELSON *v.* CASTRO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5974. LEVY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5982. FRAZIER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–5983. PARAMO *v.* CANDELARIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–5987. CLARK *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 731, 24 P. 3d 1006.

No. 01–6002. MITCHELL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 309, 543 S. E. 2d 830.

No. 01–6004. KALSKI *v.* CALIFORNIA ASSOCIATION OF PROFESSIONAL EMPLOYEES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–6005. BARBEE *v.* CALBONE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 752.

No. 01–6007. KOON *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 01–6008. MARTINEZ *v.* NOEL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–6016. ESTEP *v.* LAMARQUE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6021. MOORE *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 250 F. 3d 1295.

No. 01–6026. JEFFERS *v.* CHANDLER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 827.

No. 01–6027. JEMMERISON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6030. JONES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6037. WELLONS *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 01–6040. SMOOT *v.* UNITED TRANSPORTATION UNION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 633.

No. 01–6043. WARE *v.* CALIFORNIA BOARD OF PRISON TERMS AND PAROLES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 230 F. 3d 1368.

No. 01–6044. WILSON *v.* MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 6 Fed. Appx. 94.

No. 01–6048. BROWN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6049. RUDD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 256 F. 3d 317.

No. 01–6050. MITCHELL *v.* HOUSTON HOUSING & URBAN DEVELOPMENT ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 01–6051. SCHIEBLE *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 247.

No. 01–6052. WILSON *v.* KELLER. Ct. App. Ga. Certiorari denied.

No. 01–6056. WILLIAMS *v.* ILLINOIS DEPARTMENT OF CORRECTIONS ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–6057. THOMASON *v.* THOMASON. Sup. Ct. Wash. Certiorari denied.

No. 01–6061. RESPASS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 256 Conn. 164, 770 A. 2d 471.

No. 01–6064. RAYMER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1135.

No. 01–6065. GRAY *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6067. OWENS *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 1135.

No. 01–6068. MCGUIRE *v.* COWLEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 754.

No. 01–6070. OLIVER *v.* FOWLKES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 236.

No. 01–6073. GALLE *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 246 F. 3d 440.

No. 01–6077. INGRAM *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 01–6080. GARRETT *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6082. FLORENCE *v.* HERRERA, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6084. HORTON *v.* MARTIN, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 01–6089. MATOS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1099.

No. 01–6098. WASHINGTON *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 528.

No. 01–6099. ALLGAIER *v.* MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied.

No. 01–6100. KNISLEY *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–6104. SHEEHAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–6106. MCATEE *v.* CLARK. C. A. 7th Cir. Certiorari denied.

No. 01–6111. PROCTOR *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6113. MCBROOM *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6117. CROSS *v.* BRUTON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 752.

No. 01–6120. TURNER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6139. BEAMON *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6149. ALLEN *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6158. WALKER *v.* TRUE, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 01–6172. LENZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 261 Va. 451, 544 S. E. 2d 299.

No. 01–6177. NIX *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 744.

No. 01–6180. JENNINGS *v.* PORTUONDO, SUPERINTENDENT, SHAWANGUNK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6187. THOMPSON *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 753.

No. 01–6203. KOLAKOWSKI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 319 Ill. App. 3d 200, 745 N. E. 2d 62.

No. 01–6204. REAGAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–6214. LEWIS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS; LEWIS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS; LEWIS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS; and LEWIS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. Sup. Ct. Mich. Certiorari denied.

No. 01–6215. BUNCH *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6232. JONES *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 335, 744 N. E. 2d 1163.

No. 01–6253. WILLIAMS *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 594.

No. 01–6260. WIDMER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6262. YEPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 701.

No. 01–6269. WICKLINE *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6278. CARLSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–6279. BLACK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 21 P. 3d 1047.

No. 01–6280. EICHNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 239 F. 3d 369.

No. 01–6285. PORTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 788 So. 2d 917.

No. 01–6299. SMITH *v.* MOSLEY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–6300. OYAGUE *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 16.

No. 01–6314. PIGGIE *v.* MCBRIDE, SUPERINTENDENT, WESTVILLE MAXIMUM CONTROL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 358.

No. 01–6316. MCDONALD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 321 Ill. App. 3d 470, 748 N. E. 2d 255.

No. 01–6318. DIAZ RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 97.

No. 01–6331. PACHECO-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 706.

No. 01–6335. ROCHA LEOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 622.

No. 01–6336. ZARATE-DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 646.

No. 01–6343. MIRAMONTES-MARISCAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–6344. VALDEZ-CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 166.

No. 01–6345. ACOSTA-NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6347. LOMBARDI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–6348. MEZA-ROMAN *v.* UNITED STATES; and AVILA-AMAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164 (first judgment) and 165 (second judgment).

No. 01–6350. ESCALERA-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6351. AGHA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 257 F. 3d 191.

No. 01–6352. BURNER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 760 A. 2d 164.

No. 01–6355. BOYD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6357. DE LA GARZA-GALLEGOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6360. DANIEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 355.

No. 01–6365. RUHBAYAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 116.

No. 01–6366. BALDERAS-ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6367. SHAKELLWOOD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 21.

No. 01–6368. SPANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–6373. BARAJAS-GONZALEZ *v.* UNITED STATES (Reported below: 263 F. 3d 166); BARRAZA-GANDARA, AKA BARRNSA *v.* UNITED STATES (263 F. 3d 166); BUSTAMANTE-SOLIS *v.* UNITED STATES (263 F. 3d 166); CARRASCO-MUNIZ *v.* UNITED STATES (263 F. 3d 166); GONZALEZ-BAUTISTA *v.* UNITED STATES (263 F. 3d 166); FLORES-MOLINA *v.* UNITED STATES (263 F. 3d 166); HOLGUIN-RIOS, AKA OLGUIN *v.* UNITED STATES (263 F. 3d 166); LOPEZ-CONTRERAS, AKA GONZALEZ-CABRERA *v.* UNITED STATES (263 F. 3d 165); MARTINEZ-VASQUEZ, AKA GALLARDO-NAVARRO *v.* UNITED STATES (263 F. 3d 166); MARTINEZ-GONZALEZ, AKA MARTINEZ *v.* UNITED STATES (263 F. 3d 166); OCHOA-MEDRANO *v.* UNITED STATES (263 F. 3d 166); OLIVAS, AKA JUAREZ *v.* UNITED STATES (263 F. 3d 166); ORTEGA-FIERRO, AKA ORTEGA-SIERRO *v.* UNITED STATES (263 F. 3d 166); ORTIZ-LOPEZ *v.* UNITED STATES (263 F. 3d 166); PEREZ-CASTILLO, AKA PEREZ *v.* UNITED STATES (263 F. 3d 166); POLIDO-IBARRA, AKA GARCIA-YBARRA *v.* UNITED STATES (263 F. 3d 166); RIOJAS-LEIJA, AKA LARA *v.* UNITED STATES (263 F. 3d 165); SANDATE-HERNANDEZ *v.* UNITED STATES (263 F. 3d 166); and SOSA-AVILA *v.* UNITED STATES (263 F. 3d 166). C. A. 5th Cir. Certiorari denied.

No. 01–6377. GANN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 01–6378. GONZALEZ-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6379. FARAHKHAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–6380. HERNANDEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 160.

No. 01–6381. SUTHERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 238 F. 3d 417.

No. 01–6384. PATTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 166.

No. 01–6385. ORTIZ-VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6388. MACIN-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–6389. MATHIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–6391. PERLA-BENITEZ *v.* UNITED STATES; OLVERA-RICO *v.* UNITED STATES; RODRIGUEZ-RODRIGUEZ, AKA PEREZ FLORES *v.* UNITED STATES; and SOTO-OLIVARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164 (third judgment) and 165 (first, second, and fourth judgments).

No. 01–6393. CABADA-NAVARRETE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 528.

No. 01–6394. SWANSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 253 F. 3d 1220.

No. 01–6399. WILLIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 253 F. 3d 1215.

No. 01–6401. VASQUEZ-AREGUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–6402. THURMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 793.

No. 01–6408. CARNEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 196 Ill. 2d 518, 752 N. E. 2d 1137.

No. 01–6409. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 749.

No. 01–6411. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1145.

No. 01–6412. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6413. CALLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 141.

No. 01–6415. MICHEAUX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–6416. MORENO-ARREDONDO, AKA MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 255 F. 3d 198.

No. 01–6419. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6420. IGNACIO SANIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 252 F. 3d 79.

No. 01–6425. MAYNARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 602.

No. 01–6428. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–6429. CLINTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 F. 3d 311.

No. 01–6432. CLARK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 44.

No. 01–6433. MONTGOMERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 613.

No. 01–6434. MOORE *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 870.

No. 01–6435. PETERMAN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 458.

No. 01–6436. SAYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 247 F. 3d 929.

No. 01–6438. BROOKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6440. PRIMM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 319 Ill. App. 3d 411, 745 N. E. 2d 13.

No. 01–6444. PERCY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 250 F. 3d 720.

No. 01–6445. ESPINOZA AGUIRRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6446. SHEPPARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6451. THOMAS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 248.

No. 01–6452. BARRIENTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–6453. ANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 33.

No. 01–6454. ZUNIGA-MEJIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1146.

No. 01–6456. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–6460. CHANDLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6463. HAYES *v.* POTTER, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 208.

No. 01–6464. FRANKLIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 250 F. 3d 653.

No. 01–6465. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–6467. HELD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 1167.

No. 01–6468. FLORES-CARDONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 903.

No. 01–6469. FAUST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1145.

No. 01–6470. GARCIA-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6471. GARCIA-VALLEJO *v.* UNITED STATES; MARTINEZ-MARTINEZ *v.* UNITED STATES; and ALANIS-PERALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6474. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1062.

No. 01–6477. THOMPSON *v.* SMALL BUSINESS ADMINISTRATION. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 547.

No. 01–6479. WHITESIDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 627.

No. 01–6480. TURNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 162.

No. 01–6483. NURSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6484. ALLEN-BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 243 F. 3d 1293.

No. 01–6485. SALGADO-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 578.

No. 01–6487. SIMEK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 218.

No. 01–6489. BURGOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 254 F. 3d 8.

No. 01–6492. BARONI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 815.

No. 01–6493. PARRA-TELLEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 703.

No. 01–6494. PIPKIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 46.

No. 01–6497. TALLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 215.

No. 01–6500. WAGENER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 196 Ill. 2d 269, 752 N. E. 2d 430.

No. 01–6501. WITHERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 183.

No. 01–6502. STOKELY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1147.

No. 01–6503. RODRIGUEZ-OSORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 529.

No. 01–6504. PRATT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 874.

No. 01–6505. SANTOS-RIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 529.

No. 01–6506. STUCKEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 528.

No. 01–6508. CARRAWAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6510. BETANCOURT-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 165.

No. 01–6513. REYNOLDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 740.

No. 01–6515. GUERRA-FION, AKA GUERRA-RION *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 608.

No. 01–6516. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 30.

No. 01–6519. THORNTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 01–6520. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 621.

No. 01–6524. BACON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 354 N. C. 221, 553 S. E. 2d 689.

No. 01–6525. SANTOLO TREJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 563.

No. 01–6526. MCINTYRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1085.

No. 01–6528. MCCALISTER *v.* UNITED STATES; and
No. 01–6614. WOODS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 817.

No. 01–6529. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 440.

No. 01–6530. LINTON *v.* RANDLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 280.

No. 01–6531. PARKER, AKA WHITE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 12.

No. 01–6533. SANDERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1057.

No. 01–6535. ROBINSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6537. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6538. HIBBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 578.

No. 01–6539. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6540. HICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–6541. CARLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 119.

No. 01–6542. PROCTOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6543. MILLIGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 115.

No. 01–6547. PHIPPS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 259 F. 3d 961.

No. 01–6550. BUTTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 612.

No. 01–6556. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 581.

No. 01–6557. WATKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 298.

No. 01–6574. BERBERICH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 254 F. 3d 721.

No. 01–6579. ARELLANO-ZAVALA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 981.

No. 01–6581. ROUSSEAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 257 F. 3d 925.

No. 01–6582. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1057.

No. 01–6583. SOMERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 279.

No. 01–6585. TANH HUU LAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 251 F. 3d 852 and 262 F. 3d 1033.

No. 01–6592. PRESSLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 256 F. 3d 144.

No. 01–6593. PALACIOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 168.

No. 01–6594. HAYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 708.

No. 01–6595. HENDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–6602. CARDENAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 127.

No. 01–6604. ANTONIO PEREIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1062.

No. 01–6605. JACOBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1059.

No. 01–6606. DIGILIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 636.

No. 01–6607. SANDOVAL ESPINOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 851.

No. 01–6609. BUCHMEIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 255 F. 3d 415.

No. 01–6610. NIEVES-RUMBO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 486.

No. 01–6611. BARRIENTOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 551.

No. 01–6623. RANGEL BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 392.

No. 01–6627. ELION *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 15 Fed. Appx. 14.

No. 01–299. ALBANO ET UX. *v.* NORWEST FINANCIAL HAWAII, INC. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 244 F. 3d 1061.

No. 01–303. VANLINER INSURANCE CO. *v.* BOONE. Sup. Ct. Ohio. Motion of Defense Research Institute for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 91 Ohio St. 3d 209, 744 N. E. 2d 154.

No. 01–328. EICHORN ET AL. *v.* AT&T CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 248 F. 3d 131.

No. 01–399. ARIZONA *v.* LUCAS. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 199 Ariz. 366, 18 P. 3d 160.

No. 01–502. FISCHER, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY *v.* ZARVELA. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 254 F. 3d 374.

No. 01–540. CITY OF BOGUE ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 00–1681. WOLFE *v.* UNITED STATES, 533 U. S. 930. Petition for rehearing denied.

NOVEMBER 6, 2001

Miscellaneous Orders

No. 01A374. CLARK *v.* LEMASTER, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied.

No. 01A377. FLEMING, AS NEXT FRIEND OF CLARK *v.* LEMASTER, WARDEN, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE BREYER, and by him referred to the Court, denied.

Certiorari Denied

No. 01–7025 (01A376). HIGH *v.* HEAD, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 8, 2001

Certiorari Granted

No. 01–332. BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY ET AL. *v.* EARLS ET AL. C. A. 10th Cir. Certiorari granted. Reported below: 242 F. 3d 1264.

No. 01–147. SECURITIES AND EXCHANGE COMMISSION *v.* ZANDFORD. C. A. 4th Cir. Motion of respondent for leave to

proceed *in forma pauperis* granted. Certiorari granted. Reported below: 238 F. 3d 559.

No. 01–408. HOLMES GROUP, INC. *v.* VORNADO AIR CIRCULATION SYSTEMS, INC. C. A. Fed. Cir. Certiorari granted limited to Questions 1 and 3 presented by the petition. Reported below: 13 Fed. Appx. 961.

NOVEMBER 13, 2001

Certiorari Dismissed

No. 01–6523. NUBINE *v.* STRINGFELLOW. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 01–6613. MCSHEFFREY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders. (See also No. 108, Orig., *ante*, p. 40.)

No. D–2270. IN RE CLINTON. Bill Clinton, of New York, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 1, 2001 [*ante*, p. 806], is discharged.

No. D–2282. IN RE DISCIPLINE OF KELLY. Geoffrey Paul Kelly, of Pittsburgh, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2283. IN RE DISCIPLINE OF ENGLAND. Levi England, of Hollywood, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2284. IN RE DISCIPLINE OF GRISWOLD. Steven Stanford Griswold, of Prairie Village, Kan., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2285. IN RE DISCIPLINE OF MATTHEWS. Charles Dawson Matthews, of Bella Vista, Ark., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 01M25. CHACHERE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 01M27. MURPHY *v.* CIRCUIT COURT OF THE CITY OF ALEXANDRIA, VIRGINIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 01M28. ROUSAN *v.* MISSOURI; and
No. 01M29. MODDEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 128, Orig. ALASKA *v.* UNITED STATES. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $20,136.90 for the period April 17 through October 16, 2001, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 532 U. S. 1017.]

No. 01–5518. MULAZIM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 947] denied.

No. 01–6718. IN RE ROBINSON; and
No. 01–6790. IN RE LAVENTURE. Petitions for writs of habeas corpus denied.

No. 01–489. IN RE STEPHENS;
No. 01–492. IN RE ALCAN ALUMINUM CORP.;
No. 01–6195. IN RE WHITSON; and
No. 01–6619. IN RE THOMPSON. Petitions for writs of mandamus denied.

No. 01–6141. IN RE STUYVESANT. Petition for writ of mandamus and/or prohibition denied.

No. 01–6264. IN RE WASHINGTON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 00–1693. MIRANDA ET AL. *v.* ASHCROFT, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 238 F. 3d 1156.

No. 00–9303. ALLEN *v.* MEYERS ET AL. C. A. 3d Cir. Certiorari denied.

No. 00–10622. LAW *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1357.

No. 00–10769. MANN *v.* THALACKER, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 246 F. 3d 1092.

No. 01–213. INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA *v.* UNITED STATES FOREST SERVICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 498.

No. 01–220. HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1356.

No. 01–228. LAFFERTY *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 20 P. 3d 342.

No. 01–240. ROBOTIC VISION SYSTEMS, INC. *v.* VIEW ENGINEERING, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 249 F. 3d 1307.

No. 01–246. MORTENSON *v.* ROCK SPRINGS VISTA DEVELOPMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 837.

No. 01–258. LIEBEL *v.* GRANT ET AL. App. Ct. Conn. Certiorari denied.

No. 01–367. TONNIES ET AL., INDIVIDUALLY AND ON BEHALF OF ALL AFFECTED MEMBERS OF THE SPERRY AND BURROUGHS CLASSES *v.* UNISYS CORP.; and

No. 01–554. UNISYS CORP. *v.* TONNIES ET AL., INDIVIDUALLY AND ON BEHALF OF ALL AFFECTED MEMBERS OF THE SPERRY

AND BURROUGHS CLASSES. C. A. 3d Cir. Certiorari denied. Reported below: 242 F. 3d 497.

No. 01–370. RICHARDS ET AL. *v.* JEFFERSON COUNTY, ALABAMA, ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 805 So. 2d 690.

No. 01–374. GRIMES *v.* CITY OF ST. JOSEPH ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 560.

No. 01–375. KOZINSKI *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 01–381. PENOBSCOT NATION ET AL. *v.* GREAT NORTHERN PAPER, INC., ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 770 A. 2d 574.

No. 01–382. DORAN ET AL. *v.* CURRIER ET AL.; and
No. 01–551. CURRIER ET AL. *v.* DORAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 905.

No. 01–383. EDDY POTASH, INC. *v.* HARRISON. C. A. 10th Cir. Certiorari denied. Reported below: 248 F. 3d 1014.

No. 01–389. COX *v.* PRINCE WILLIAM COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 249 F. 3d 295.

No. 01–390. FARM CREDIT SERVICES OF MID-AMERICA *v.* ZAINO, TAX COMMISSIONER OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 564, 747 N. E. 2d 814.

No. 01–395. DOELL *v.* MYERS, ATTORNEY GENERAL OF OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 332 Ore. 169, 26 P. 3d 141.

No. 01–396. FAIRPORT INTERNATIONAL EXPLORATION, INC. *v.* SHIPWRECKED VESSEL KNOWN AS THE CAPTAIN LAWRENCE. C. A. 6th Cir. Certiorari denied. Reported below: 245 F. 3d 857.

No. 01–407. BUGRYN ET AL. *v.* CITY OF BRISTOL ET AL. App. Ct. Conn. Certiorari denied. Reported below: 63 Conn. App. 98, 774 A. 2d 1042.

No. 01–409. GANGALE ET AL. *v.* PENSON FINANCIAL SERVICES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 76.

No. 01–411. HARRIS *v.* GALJOUR ET UX. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 795 So. 2d 350.

No. 01–416. CORRIGAN *v.* IMAGINETICS, INC. Ct. App. Wash. Certiorari denied. Reported below: 99 Wash. App. 1036.

No. 01–418. BEW ET AL. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 252 F. 3d 891.

No. 01–422. KAYSER, DBA QUALITY EXPRESS *v.* ROADWAY PACKAGE SYSTEM, INC. C. A. 3d Cir. Certiorari denied. Reported below: 257 F. 3d 287.

No. 01–424. RAINBOW CONSTRUCTION CO. ET AL. *v.* RADCLIFFE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 254 F. 3d 772.

No. 01–426. KEMPER INSURANCE COS. *v.* FEDERAL EXPRESS CORP. C. A. 1st Cir. Certiorari denied. Reported below: 252 F. 3d 509.

No. 01–427. CORNISH *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Certiorari denied.

No. 01–428. NEGOCE *v.* BLYSTAD SHIPPING & TRADING, INC. C. A. 2d Cir. Certiorari denied. Reported below: 252 F. 3d 218.

No. 01–429. TULLIS ET UX. *v.* LEE, SMART, COOK, MARTIN & PATTERSON P. S., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 651.

No. 01–430. THRASH *v.* GULLIFORD. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 766.

No. 01–431. DALE M., BY HIS MOTHER AND NEXT FRIEND, ALICE M. *v.* BOARD OF EDUCATION OF BRADLEY-BOURBONNAIS HIGH SCHOOL DISTRICT NO. 307 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 237 F. 3d 813.

No. 01–433. NATIONAL TELEPHONE COOPERATIVE ASSN. *v.* EXXON MOBIL CORP. C. A. D. C. Cir. Certiorari denied. Reported below: 244 F. 3d 153.

No. 01–434. TRANSOCEAN TERMINAL OPERATORS, INC. *v.* TAYLOR. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 785 So. 2d 860.

No. 01–436. LINDAMOOD *v.* OFFICE OF THE STATE ATTORNEY. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 711.

No. 01–439. BUTTS *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 01–444. BETTERSWORTH *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 386.

No. 01–450. BROWN *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 01–453. NAVROZOV *v.* NOVOYE RUSSKOYE SLOVO PUBLISHING CORP. ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 280 App. Div. 2d 426, 721 N. Y. S. 2d 501.

No. 01–458. STARLIGHT SUGAR, INC., ET AL. *v.* SOTO, SECRETARY OF AGRICULTURE OF PUERTO RICO. C. A. 1st Cir. Certiorari denied. Reported below: 253 F. 3d 137.

No. 01–462. WAITE *v.* PATCH PRODUCTS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 330.

No. 01–464. LINER *v.* DONTRON, INC., T/A RADIO STATION WYCA–FM, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 523.

No. 01–465. OTTO *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 253 F. 3d 960.

No. 01–473. ADAMS *v.* FRANKLIN, SHERIFF, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–474. TIMMONS ET AL. *v.* CASSELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 298.

No. 01–476. JACOBS ET AL. *v.* WU ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–479. MARTIN ET AL. *v.* PENNSYLVANIA; and MARTIN *v.* PENNSYLVANIA BOARD OF LAW EXAMINERS. Super. Ct. Pa. Certiorari denied. Reported below: 766 A. 2d 896 (first judgment).

No. 01–482. KNIGHT *v.* SCHMITZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 713.

No. 01–490. BRANCACCIO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 773 So. 2d 582.

No. 01–500. BERRYHILL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 801 So. 2d 7.

No. 01–505. COX *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 345 Ark. 391, 47 S. W. 3d 244.

No. 01–519. OMLIN *v.* KAUFMAN & CUMBERLAND, L. P. A. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 477.

No. 01–523. PEGASUS GROUP ET AL. *v.* A & L ENERGY, INC. Sup. Ct. La. Certiorari denied. Reported below: 791 So. 2d 1266.

No. 01–544. HARRIS COUNTY, TEXAS *v.* SIMI INVESTMENT CO., INC. C. A. 5th Cir. Certiorari denied. Reported below: 236 F. 3d 240.

No. 01–545. GRINE ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 491.

No. 01–570. DUKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 656.

No. 01–572. HUMPHREYS ET AL. *v.* MEADOWS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–579. HAGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–581. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 573.

No. 01–605. WALSH *v.* FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF LAND SALES, CONDOMINIUMS, AND MOBILE HOMES. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 787 So. 2d 874.

No. 01–621. DACHMAN *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 186.

No. 01–627. LOVE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 796.

No. 01–635. MADEIROS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 243 Wis. 2d 116, 627 N. W. 2d 548.

No. 01–5050. EDWARDS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 142, 745 N. E. 2d 1212.

No. 01–5152. NEALY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 232 F. 3d 825.

No. 01–5228. WADLINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 233 F. 3d 1067.

No. 01–5328. PARKER *v.* HOLT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 440.

No. 01–5614. HAMMEL ET AL. *v.* STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 169.

No. 01–5647. FRANCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–5671. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5686. TERRY *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 46 S. W. 3d 147.

No. 01–5712. MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1081.

No. 01–5731. PRUDENT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–5782. JOERGER *v.* ASHCROFT, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari denied.

No. 01–5799. COBLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 193.

No. 01–5817. WILLIAMS *v.* UNITED INSURANCE COMPANY OF AMERICA ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–6042. OLIVAS *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 01–6085. GRIFFIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6124. DEVILLAR *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6129. DAVIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 804 So. 2d 1153.

No. 01–6132. FARRIS *v.* NATIONSBANC MORTGAGE CORP. ET AL. Ct. App. Ga. Certiorari denied.

No. 01–6137. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6142. RUSSWORM *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–6146. SPARKMAN *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 01–6147. AUTREY, AKA FLETCHER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 810 So. 2d 809.

No. 01–6148. BARRIOS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 27 S. W. 3d 313.

No. 01–6152. BOLEY *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6153. QUINN *v.* BOYD, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 01–6156. BIRDSONG *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 732 So. 2d 1208.

No. 01–6159. WRAY *v.* HALEY, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6160. VANISI *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 117 Nev. 330, 22 P. 3d 1164.

No. 01–6167. MOORE *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6182. WILLIAMS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6186. WILSON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1142.

No. 01–6188. BERRY *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6191. WILLIAMS *v.* UNITED INSURANCE COMPANY OF AMERICA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 253 F. 3d 280.

No. 01–6198. STEPHENS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 787 So. 2d 747.

No. 01–6199. LUKE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 281 App. Div. 2d 947, 725 N. Y. S. 2d 153.

No. 01–6206. BRYANT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 785 So. 2d 422.

No. 01–6212. JACKSON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 01–6213. JURY *v.* OLIVAREZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 811.

No. 01–6217. WILLIAMS *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6218. WILKENS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–6219. MONK *v.* REED, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–6221. NORTH *v.* MAGYAR ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 122.

No. 01–6229. LANDRY *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 424.

No. 01–6233. LINGLE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 133.

No. 01–6234. JOHNSON *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6236. REEVES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 807 So. 2d 18.

No. 01–6237. BROOKS *v.* GARCIA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6238. KAMARA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–6241. KURIAN *v.* CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 16 Fed. Appx. 43.

No. 01–6248. CURRY *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6249. CARR *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–6250. MARTINEZ *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 792 So. 2d 1214.

No. 01–6251. BARNETT *v.* ARENDS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 01–6254. OMELI *v.* NATIONAL COUNCIL OF SENIOR CITIZENS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 304.

No. 01–6256. HERNANDEZ *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 90.

No. 01–6257. HAYMON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 277 App. Div. 2d 971, 716 N. Y. S. 2d 848.

No. 01–6258. BIRKHOLZ *v.* MONTANA ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6261. UNDERWOOD *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 01–6265. VOGLIOTTI *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 01–6266. THAN VAN PHAM *v.* MORGAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6267. MOUNCE *v.* BOONE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 779.

No. 01–6268. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6270. LIPSCOMB *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 178.

No. 01–6273. AGARDI *v.* IOWA. C. A. 8th Cir. Certiorari denied.

No. 01–6277. COLE *v.* YUKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6286. MARTIN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1140.

No. 01–6307. WOODFOX *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 01–6308. WILLIAMS *v.* TYSZKIEWICZ, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6321. BYRD *v.* MEYERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 01–6323. OPPENHEIMER *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied.

No. 01–6329. ADAMS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6333. BURNS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–6339. MARABLE *v.* HINKLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 168.

No. 01–6341. POTEET *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6356. NORRIS *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Sup. Ct. Ore. Certiorari denied. Reported below: 331 Ore. 194, 13 P. 3d 104.

No. 01–6361. ALEXANDER *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6369. SCARVER *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 2d Cir. Certiorari denied.

No. 01–6375. BEHRING *v.* BRAVO, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 901.

No. 01–6390. JOHNSON *v.* MCCLUNG, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–6400. TENSLEY *v.* MASCHNER. C. A. 8th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 684.

No. 01–6406. CISNEROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 712.

No. 01–6426. LINDSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 838.

No. 01–6455. WOLF *v.* NORTHWEST INDIANA SYMPHONY SOCIETY. C. A. 7th Cir. Certiorari denied. Reported below: 250 F. 3d 1136.

No. 01–6473. CARTER *v.* CARLTON, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 01–6478. WILLIAMSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 319 Ill. App. 3d 891, 747 N. E. 2d 26.

No. 01–6481. MALCOM *v.* KENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–6486. BASILE *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 567.

No. 01–6498. MORIN *v.* TRUSTEES, SOUTHERN CONNECTICUT STATE UNIVERSITY, ET AL. App. Ct. Conn. Certiorari denied.

No. 01–6499. TOKAR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 01–6509. CAUDILL *v.* JARVIS, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 01–6517. KIZER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 318 Ill. App. 3d 238, 741 N. E. 2d 1103.

No. 01–6544. CARTER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6548. YOUNG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 316 Ill. App. 3d 963, 738 N. E. 2d 134.

No. 01–6559. ROCKFORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 771.

No. 01–6560. SPRENZ *v.* HUFFMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6564. MAHAFFEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 194 Ill. 2d 154, 742 N. E. 2d 251.

No. 01–6565. KNUTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 706.

No. 01–6566. JOHNSON *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 254 F. 3d 1155.

No. 01–6567. TREADWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 291.

No. 01–6569. DASH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 53.

No. 01–6572. NOSRATI-SHAMLOO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 F. 3d 1290.

No. 01–6575. MELENDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–6578. ERICKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 589.

No. 01–6588. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 469.

No. 01–6589. TAPIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 656.

No. 01–6590. WHALEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 49 S. W. 3d 181.

No. 01–6596. GUZMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1156, 783 N. E. 2d 237.

No. 01–6597. HERNANDEZ-RAMIREZ, AKA HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 254 F. 3d 841.

No. 01–6620. BARRIOS-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 1024.

No. 01–6621. RAMIREZ-MORALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–6622. GARCIA-HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1063.

No. 01–6625. SOTO-GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 170.

No. 01–6626. MCCLAIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6628. EUBANKS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 32.

No. 01–6632. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 180.

No. 01–6640. HALEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 426.

No. 01–6641. BEAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 580.

No. 01–6655. FONTANEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 275 F. 3d 38.

No. 01–6658. POUND *v.* HOUSTON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–6660. COX *v.* DOBRE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–6661. TURNER *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 262 F. 3d 118.

No. 01–6666. COUCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 66.

No. 01–6667. CAMPUZANO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6668. CHIANELLI *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. Fed. Cir. Certiorari denied. Reported below: 8 Fed. Appx. 971.

No. 01–6669. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6670. FURNISH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 252 F. 3d 950.

No. 01–6671. GALLARDO-MARQUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 253 F. 3d 1121.

No. 01–6674. ABDULLAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 152.

No. 01–6675. CASAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 79.

No. 01–6677. BUSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 817.

No. 01–6679. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6681. CAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 161.

No. 01–6686. PAZ-ZAMUDIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 483.

No. 01–6687. NEAL *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 01–6688. MEJIA-VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 65.

No. 01–6692. JEFFERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 190.

No. 01–6693. MATTOX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6694. ARIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1142.

No. 01–6698. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 256 F. 3d 381.

No. 01–6701. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 675.

No. 01–6704. MARTINEZ MADRIGAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6706. PFEIL *v.* EVERETT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 973.

No. 01–6709. QUOC THAI MINH THUY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 F. 3d 1335.

No. 01–6714. REDMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 168.

No. 01–6715. SANDERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 247 F. 3d 139.

No. 01–6716. RINGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 844.

No. 01–6717. REDMOND *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 262 Neb. 411, 631 N. W. 2d 501.

No. 01–6719. SUGGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 54.

No. 01–6722. HUMPHREY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 328.

No. 01–6724. HENDERSON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 245 Wis. 2d 345, 629 N. W. 2d 613.

No. 01–6725. HOOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 168.

No. 01–6727. NARANJO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 254 F. 3d 311.

No. 01–6729. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 465.

No. 01–6734. BRADD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 246 F. 3d 1054.

No. 01–6735. TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6738. FLORES-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1059.

No. 01–6739. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 F. 3d 355.

No. 01–6743. DICKINSON *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 561.

No. 01–6744. CURTIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 129.

No. 01–6746. RAYMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 513.

No. 01–6748. BARNES *v.* GALLEY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 296.

No. 01–6750. CRUZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–6754. RIVERA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1058.

No. 01–6758. QUILLING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 261 F. 3d 707.

No. 01–6760. RIVERA-ALVAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 716.

No. 01–6761. RIOS-CASTANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1060.

No. 01–6762. SANDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 626.

No. 01–6765. BENALLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 750.

No. 01–6767. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 262 F. 3d 233.

No. 01–6768. WATTS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–6769. PIRELLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 728.

No. 01–6770. BRANCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6771. WILSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 611.

No. 01–6773. STEELE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 202 F. 3d 262.

No. 01–6774. STURKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1183.

No. 01–6775. SKAMFER *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 01–6781. LOCKLEAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 76.

No. 01–6786. PEALOCK, AKA CORN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–6787. SQUIRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1084.

No. 01–6791. ACEVES-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 712.

No. 01–6792. MCNALLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 214.

No. 01–6800. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1057.

No. 01–6805. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 89.

No. 01–6806. DOWNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1115.

No. 01–6807. MILES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1108.

No. 01–6808. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 118.

No. 01–6809. MCQUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 75.

No. 01–6816. ANTONIO SANDOVAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–6833. MEJIA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 18 Fed. Appx. 20.

No. 01–6836. TERRY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 257 F. 3d 366.

No. 01–6916. NEWAGO *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 246 Wis. 2d 671, 630 N. W. 2d 276.

No. 01–172. BIOMET, INC. *v.* TRONZO. C. A. Fed. Cir. Motion of Past Presidents of Federal Circuit Bar Association for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 236 F. 3d 1342.

No. 01–249. BERNOFSKY *v.* ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 253 F. 3d 700.

No. 01–335. GIBSON, WARDEN *v.* JOHNSON. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 254 F. 3d 1155.

No. 01–6576. ANDERSON *v.* CALDERON, WARDEN. C. A. 9th Cir. Motion of California Public Defenders Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 232 F. 3d 1053.

Rehearing Denied

No. 00–9932. INGRAHAM *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 838;

No. 00–10397. JOHNSON *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 855;

No. 00–10571. HILL *v.* ELTING ET AL., *ante*, p. 866;

No. 00–10584. MARCELLO *v.* MAINE DEPARTMENT OF HUMAN SERVICES, *ante*, p. 867;

No. 00–10600. DASINGER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 868;

No. 00–10753. LEWIS *v.* ZERO BREESE ROOFING CO. ET AL., *ante*, p. 877;

No. 00–10867. SEDGWICK *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, *ante*, p. 883;

No. 01–129. IN RE FERNANDES, *ante*, p. 812;

No. 01–141. ELJACK *v.* HAMMOUD ET AL., *ante*, p. 892;

No. 01–5070. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. ET AL., *ante*, p. 901;

No. 01–5407. ROWELL *v.* NEVADA; ROWELL *v.* NEVADA; and ROWELL *v.* NEVADA ET AL., *ante*, p. 921;

No. 01–5488. BOYD *v.* UNITED STATES RURAL DEVELOPMENT ET AL., *ante*, p. 926;

No. 01–5604. BALLARD *v.* TRUE, WARDEN, *ante*, p. 959;

No. 01–5613. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC., *ante*, p. 959;

No. 01–5654. SEDGWICK *v.* UNITED STATES ET AL., *ante*, p. 932; and

No. 01–5677. NAGY *v.* UNITED STATES, *ante*, p. 932. Petitions for rehearing denied.

NOVEMBER 14, 2001

Certiorari Denied

No. 01–7050 (01A393). GILREATH *v.* HEAD, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 15, 2001

Miscellaneous Orders

No. 01A394. RUDD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

No. 01A395. GILREATH *v.* GEORGIA STATE BOARD OF PARDONS AND PAROLES ET AL. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE SCALIA took no part in the consideration or decision of this application.

NOVEMBER 21, 2001

Miscellaneous Orders

No. 00–952. WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES *v.* BLUMER. Ct. App. Wis. [Certiorari granted, 533 U. S. 927.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1073. OWASSO INDEPENDENT SCHOOL DISTRICT NO. I–011, AKA OWASSO PUBLIC SCHOOLS, ET AL. *v.* FALVO, PARENT AND NEXT FRIEND OF HER MINOR CHILDREN, PLETAN ET AL. C. A. 10th Cir. [Certiorari granted, 533 U. S. 927.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928.] Motion of the Solicitor General for divided argument

granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

NOVEMBER 26, 2001

Affirmed on Appeal

No. 01–283. UTAH ET AL. *v.* EVANS, SECRETARY OF COMMERCE, ET AL. Affirmed on appeal from D. C. Utah. Reported below: 143 F. Supp. 2d 1290.

Certiorari Dismissed

No. 01–6764. TILLI *v.* IRENAS ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 275 F. 3d 38.

Miscellaneous Orders

No. 01A346. ALLEY *v.* BELL, WARDEN. Application for certificate of appealability, addressed to JUSTICE BREYER and referred to the Court, denied.

No. D–2266. IN RE GUTIERREZ. Maria Cristina Gutierrez, of Towson, Md., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 1, 2001 [*ante*, p. 805], is discharged.

No. 01M26. ALASKA STATE LEGISLATURE ET AL. *v.* UNITED STATES ET AL. Motion to direct the Clerk to file as timely a petition for leave to intervene and a petition for writ of certiorari denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of the Special Master for fees and reimbursement of expenses granted, and the Special Master is awarded a total of $179,064.66 for the period March 1 through October 31, 2001, to be paid equally by the three States. [For earlier order herein, see, *e. g.*, 532 U. S. 992.]

No. 00–1614. NATIONAL RAILROAD PASSENGER CORPORATION *v.* MORGAN. C. A. 9th Cir. [Certiorari granted, 533 U. S. 927.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–6342. SENGUPTA *v.* UNIVERSITY OF ALASKA. Sup. Ct. Alaska. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 17, 2001, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 01–6395. IN RE YOUNG. D. C. W. D. Ky. Petition for writ of common-law certiorari denied.

No. 01–6996. IN RE CLARK. Petition for writ of habeas corpus denied.

No. 01–6981. IN RE HEIMERMANN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 01–6303. IN RE RANKINS; and
No. 01–6448. IN RE MARKHAM. Petitions for writs of mandamus denied.

Certiorari Granted

No. 01–131. GISBRECHT ET AL. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari as to Gary E. Gisbrecht, Barbara A. Miller, and Nancy Sandine granted. Certiorari as to Donald L. Anderson denied. Reported below: 238 F. 3d 1196.

Certiorari Denied. (See also Nos. 01–131 and 01–6395, *supra.*)

No. 01–5. UNITED STEELWORKERS OF AMERICA, AFL–CIO, CLC, ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 242 F. 3d 1300.

No. 01–106. AVENDANO-RAMIREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 242 F. 3d 377.

No. 01–120. COALITION OF NEW JERSEY SPORTSMEN, INC., ET AL. *v.* DIFRANCESCO, ACTING GOVERNOR OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 157.

No. 01–126. DANIELS ET AL. *v.* PATENAUDE ET AL. C. A. 1st Cir. Certiorari denied.

No. 01–134. ABBOTT, AKA ROBERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 331.

No. 01–204. KISSIMMEE RIVER VALLEY SPORTSMAN ASSN. *v.* CITY OF LAKELAND. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 1324.

No. 01–252. GOETZ, DBA JERRY GOETZ AND SONS *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 718.

No. 01–265. HOECHST CELANESE CORP. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 508, 22 P. 3d 324.

No. 01–280. NAPERVILLE READY MIX, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 242 F. 3d 744.

No. 01–319. TISBURY TOWING & TRANSPORTATION CO., INC., FKA PACKER MARINE, INC. *v.* TUG VENUS ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 251 F. 3d 298.

No. 01–341. BRICE ET AL. *v.* THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 240 F. 3d 1367.

No. 01–351. KNIGHT ET AL. *v.* BUCKNAM. Ct. App. Mich. Certiorari denied.

No. 01–413. UNITED STATES EX REL. LUJAN *v.* HUGHES AIRCRAFT CO. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 1181.

No. 01–459. EATON CORP. *v.* CITY OF DETROIT. C. A. 6th Cir. Certiorari denied. Reported below: 247 F. 3d 619.

No. 01–468. GARCIA *v.* ROGER ERNST & ASSOCIATES ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 01–470. HARNISH *v.* AMERICAN AIRLINES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 161.

No. 01–477. BURGESS *v.* FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 772 So. 2d 540.

No. 01–480. LANDON *v.* RALLS ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 792 So. 2d 453.

No. 01–485. FARMERS INSURANCE EXCHANGE *v.* BELL ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 87 Cal. App. 4th 805, 105 Cal. Rptr. 2d 59.

No. 01–494. SEGAL *v.* MASSACHUSETTS MUTUAL LIFE INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 451.

No. 01–496. JOHNSON *v.* BOYD, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 361.

No. 01–498. MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT *v.* NORTON, SECRETARY OF THE INTERIOR. C. A. 9th Cir. Certiorari denied. Reported below: 244 F. 3d 1164.

No. 01–499. BROWN *v.* ILLINOIS CENTRAL RAILROAD CO. C. A. 7th Cir. Certiorari denied. Reported below: 254 F. 3d 654.

No. 01–507. LEWIS *v.* COUNTY OF ORANGE. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 772 So. 2d 558.

No. 01–511. HANSEN *v.* CALDWELL DIVING CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 102.

No. 01–512. MOSHER *v.* DOLLAR TREE STORES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 240 F. 3d 662.

No. 01–514. RAZVI *v.* GUARANTEE LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–517. BAK *v.* REDFORD TOWNSHIP. Ct. App. Mich. Certiorari denied.

No. 01–520. R. W. DOCKS & SLIPS *v.* WISCONSIN ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 244 Wis. 2d 497, 628 N. W. 2d 781.

No. 01–522. ZELLWEGER ET UX. *v.* CITY OF ALLIANCE. Ct. App. Ohio, Stark County. Certiorari denied.

No. 01–524. NUNU ET UX. *v.* DEL LAGO ESTATES PROPERTY OWNERS ASSN. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–525. EZELL *v.* DIRECT LABOR, INC., ET AL. Ct. App. La., 1st Cir. Certiorari denied.

No. 01–527. ERKINS ET UX. *v.* BIANCO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 243 F. 3d 599.

No. 01–528. DALLAS AREA RAPID TRANSIT *v.* WILLIAMS. C. A. 5th Cir. Certiorari denied. Reported below: 242 F. 3d 315.

No. 01–531. FARM & GROVE REALTY CO. *v.* BREVARD COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 785 So. 2d 498.

No. 01–539. BENSON *v.* SAFFORD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 405.

No. 01–549. RICHTER *v.* RICHTER. Ct. App. Minn. Certiorari denied. Reported below: 625 N. W. 2d 490.

No. 01–555. DOE ET AL. *v.* EAGLE-UNION COMMUNITY SCHOOL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 567.

No. 01–574. SHOLDRA *v.* CHILMARK FINANCIAL, LLP. C. A. 5th Cir. Certiorari denied. Reported below: 249 F. 3d 380.

No. 01–575. ALLUSTIARTE ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 256 F. 3d 1349.

No. 01–576. COOPER *v.* BOARD OF EDUCATION OF MURPHYSBORO COMMUNITY UNIT SCHOOL DISTRICT 186, JACKSON COUNTY, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 438.

No. 01–577. CAMOSCIO *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 01–580. KINLAW *v.* SECURITIES AND EXCHANGE COMMISSION; and

No. 01–588. PARKER ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 1080.

No. 01–598. LAWSON *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 934.

No. 01–640. GOODSON ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5837. RODRIGUEZ JIMENEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 224 F. 3d 1243.

No. 01–5867. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 484.

No. 01–5868. ARTHUR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 248 F. 3d 11.

No. 01–5949. BURNS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 261 Va. 307, 541 S. E. 2d 872.

No. 01–5965. KIRILLOV *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–5966. BAIZA HERNANDEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 344.

No. 01–5986. CASILLAS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 461, 749 N. E. 2d 864.

No. 01–5992. JOHNSON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 243 Wis. 2d 365, 627 N. W. 2d 455.

No. 01–6034. HARDY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 804 So. 2d 298.

No. 01–6287. KNOWLES *v.* HINES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 890.

No. 01–6288. KRUMM *v.* PAINTER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 206.

No. 01–6289. JONES *v.* BOOKER, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6298. BOWIE *v.* OKLAHOMA COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 694.

No. 01–6302. STEVENSON *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6305. WOMACK *v.* TRUE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 161.

No. 01–6309. MITCHELL *v.* BOWMAN, JUDGE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 740.

No. 01–6311. ROGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1101.

No. 01–6312. STALLONE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 279 App. Div. 2d 592, 719 N. Y. S. 2d 293.

No. 01–6315. MORO *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 01–6322. PITTS *v.* SMALLS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6328. ELDER *v.* TYSON FOODS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 444.

No. 01–6334. HILL *v.* ADMINISTRATIVE HEARING OFFICER FOR THE CHILD SUPPORT ENFORCEMENT AGENCY OF CUYAHOGA COUNTY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 389.

No. 01–6340. HAYES *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6346. JEAN-HENRIQUEZ *v.* BRYANT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1176.

No. 01–6349. MILLIGAN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 769 A. 2d 1207.

No. 01–6354. BILAL, AKA BURTON *v.* DRIVER. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 1346.

No. 01–6358. WERTHEIMER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6359. WOODRUFF *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 239 F. 3d 1156.

No. 01–6362. OLMOES ENRIQUEZ *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 243 F. 3d 547.

No. 01–6363. CHURCH *v.* CITY COLLEGE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–6364. BERRY *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 01–6371. RUSSELL *v.* GEARINGER, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 01–6372. SIMS *v.* KENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–6374. LESLIE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6376. HERZOG *v.* THOMPSON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 786.

No. 01–6382. PORTER *v.* MORROW, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 01–6386. AVILA-MERCADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 956.

No. 01–6387. LEWIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 610, 22 P. 3d 392.

No. 01–6392. PRICE *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY (CALIFORNIA, REAL PARTY IN INTEREST). Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 1046, 25 P. 3d 618.

No. 01–6397. CARPENTER *v.* COX. C. A. 7th Cir. Certiorari denied.

No. 01–6403. WRAY *v.* GARDINE ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–6404. ALVARADO *v.* HAHN, WARDEN. C. A. 10th Cir. Certiorari denied.

No. 01–6405. MCBRIDE *v.* SABOURIN, SUPERINTENDENT, ARTHUR KILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6407. DITTON *v.* MONTANA COMMISSION ON CHARACTER AND FITNESS. Sup. Ct. Mont. Certiorari denied.

No. 01–6410. SHEGOG *v.* BRUNELLE, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6414. DEL CARPIO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6417. NORDSTROM *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 200 Ariz. 229, 25 P. 3d 717.

No. 01–6418. PARKER *v.* HEAD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 831.

No. 01–6423. JOHNSON *v.* WARD. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 613.

No. 01–6424. ANDUJAR *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6427. JEAN-HENRIQUEZ *v.* MERA ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6431. CALL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 400, 545 S. E. 2d 190.

No. 01–6439. ROMANO *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 239 F. 3d 1156.

No. 01–6442. BELTON *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6443. BATES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 01–6447. SANDERS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 759 A. 2d 24.

No. 01–6449. JACKSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 795 So. 2d 1193.

No. 01–6450. MCINTYRE *v.* JONES, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6457. TODD *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 75.

No. 01–6458. WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.; WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.; and WILLIAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 794 So. 2d 608.

No. 01–6459. BOOMER *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6461. SMITH *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 01–6472. DUMAS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 790 So. 2d 428.

No. 01–6482. HAFDAHL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 251 F. 3d 528.

No. 01–6488. SCOTT *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 271 Kan. 103, 21 P. 3d 516.

No. 01–6490. JONES *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 245.

No. 01–6495. SMITH *v.* O'HALLORAND ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6496. SLEZAK *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 316.

No. 01–6507. DIAZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 283 App. Div. 2d 169, 723 N. Y. S. 2d 858.

No. 01–6511. COFFEY *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 503.

No. 01–6512. DIXON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 01–6514. ARCHILA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6518. MARTINEZ *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6521. OPONG-MENSAH *v.* CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 01–6522. LEE, AKA CAMPBELL *v.* ABRAHAMSON, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–6527. MORRIS *v.* OHIO. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 01–6532. MCALILEY *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 797 So. 2d 589.

No. 01–6534. REDMOND *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–6546. IN RE PRASAD. Sup. Ct. Cal. Certiorari denied.

No. 01–6551. PARKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–6552. DAVIS *v.* VALLEY CARE MEMORIAL HOSPITAL ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–6555. BRADLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 787 So. 2d 732.

No. 01–6558. DAWSON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6656. BICKHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6700. PENDAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1062.

No. 01–6712. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 100.

No. 01–6731. TERESCHOUK *v.* PATENT AND TRADEMARK OFFICE, BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 7 Fed. Appx. 972.

No. 01–6752. EDWARDS *v.* BOGAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 70.

No. 01–6783. BUCKENDAHL ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 251 F. 3d 753.

No. 01–6789. BUTCHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 476.

No. 01–6797. SIMMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 256 F. 3d 231.

No. 01–6818. JOHNSTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 490.

No. 01–6819. KEYS *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–6822. PETRONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–6826. ARRINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 637.

No. 01–6830. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–6834. MCAFEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–6835. THOMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 340.

No. 01–6841. LOPEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 129 F. 3d 1266.

No. 01–6846. BRODIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–6853. REDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 127.

No. 01–6855. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–6856. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6858. TOLLIVER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–6863. DIX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 414.

No. 01–6864. COLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–6870. COATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 262 F. 3d 233.

No. 01–6874. HETHERINGTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 256 F. 3d 788.

No. 01–6878. GUANIPA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6879. HANSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 713.

No. 01–6891. HOLLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 66.

No. 01–6900. CARRILLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 490.

No. 01–6903. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 145.

No. 01–6906. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 165.

No. 01–6909. HOLT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–6910. HUDDLESTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6911. BROWN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 366.

No. 01–6921. TOBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–6929. BAXTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 170.

No. 01–6933. WATSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 01–6947. BATTLE *v.* BURGESS, ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 01–6954. MENDOZA-RIVAS, AKA MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 685.

No. 01–6956. MACEDO-MOLINA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 217.

No. 01–6961. KAIMANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 733.

No. 01–6964. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6967. DWYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 362.

No. 01–6975. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6988. RIMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 484.

No. 01–6997. CORPUS-HOOKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–6999. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 331.

No. 01–7002. BEASLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 251.

No. 01–7008. CLAVERIA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–487. CONNECTICUT *v.* REVELO. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 256 Conn. 494, 775 A. 2d 260.

Rehearing Denied

No. 00–1809. KUNGLE *v.* INNOVATIVE PROPERTIES, INC., ET AL., *ante*, p. 820;

No. 00–10049. VANN *v.* MCCULLOUGH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL., *ante*, p. 840;

No. 01–5276. GILREATH *v.* HEAD, WARDEN, *ante*, p. 913; and

No. 01–5424. SLAGEL *v.* RUTH ET AL., *ante*, p. 922. Petitions for rehearing denied.

NOVEMBER 27, 2001

Dismissal Under Rule 46

No. 01–547. RUBIO *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 7 Fed. Appx. 606.

DECEMBER 3, 2001

Certiorari Granted—Vacated and Remanded

No. 00–1115. UNITED STATES *v.* LITTLE SIX, INC., ET AL. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Chickasaw Nation* v. *United States*, *ante*, p. 84. Reported below: 210 F. 3d 1361.

Certiorari Dismissed. (See also No. 01–6690, *infra.*)

No. 01–6554. HIGGASON *v.* LEMMON. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 6 Fed. Appx. 433.

No. 01–6682. THOMAS *v.* LINAHAN, WARDEN, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 00–1543. FESTO CORP. *v.* SHOKETSU KINZOKU KOGYO KABUSHIKI CO., LTD., ET AL. C. A. Fed. Cir. [Certiorari granted, 533 U. S. 915.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–6029. RAGSDALE ET AL. *v.* WOLVERINE WORLD WIDE, INC. C. A. 8th Cir. [Certiorari granted, 533 U. S. 928.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1853. SWIERKIEWICZ *v.* SOREMA N. A. C. A. 2d Cir. [Certiorari granted, 533 U. S. 976.] Motion of NAACP Legal Defense and Educational Fund, Inc., for leave to file a brief as *amicus curiae* granted.

No. 00–8452. ATKINS *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, 533 U. S. 976 and *ante*, p. 809.] Motion of *amici curiae* filers in No. 00–8727, *McCarver* v. *North Carolina*, to have their *amici curiae* briefs considered in support of petitioner in this case granted.

No. 01–301. NEWLAND, WARDEN *v.* SAFFOLD. C. A. 9th Cir. [Certiorari granted, *ante*, p. 971.] Motion for appointment of counsel granted, and it is ordered that Mary Katherine McComb, Esq., of Sacramento, Cal., be appointed to serve as counsel for respondent in this case.

No. 01–6577. MURRAY *v.* RESTOR TELEPHONE PRODUCTS. C. A. 5th Cir.; and

No. 01–6629. DENNIS *v.* DENNIS. Ct. App. S. C. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 26, 2001, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 01–6690. IN RE YOUNG. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition

for writ of common-law certiorari dismissed. See this Court's Rule 39.8.

No. 01–7026. IN RE CERVANTES. Petition for writ of habeas corpus denied.

No. 01–6635. IN RE HILLERY. Petition for writ of mandamus denied.

Certiorari Granted

No. 01–584. ADAMS ET AL. *v.* FLORIDA POWER CORP. ET AL. C. A. 11th Cir. Certiorari granted. Reported below: 255 F. 3d 1322.

No. 01–521. REPUBLICAN PARTY OF MINNESOTA ET AL. *v.* KELLY, CHAIRPERSON, MINNESOTA BOARD OF JUDICIAL STANDARDS, ET AL. C. A. 8th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 247 F. 3d 854.

Certiorari Denied

No. 00–1497. CITY OF YONKERS *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 239 F. 3d 211.

No. 01–184. BLUE DIAMOND COAL CO. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 519.

No. 01–190. OGREN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 54 M. J. 481.

No. 01–195. LEAK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 757 A. 2d 739.

No. 01–205. CONSOLIDATED EDISON COMPANY OF NEW YORK ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 247 F. 3d 1378.

No. 01–223. CONSUMER FEDERATION OF AMERICA ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 240 F. 3d 1126.

No. 01–358. CONEY ISLAND RESORTS, INC. *v.* GIULIANI, MAYOR OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 11 Fed. Appx. 11.

No. 01–363. BUSCH *v.* COMMODITY FUTURES TRADING COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 751.

No. 01–378. RODRIGUEZ *v.* IBP, INC. C. A. 10th Cir. Certiorari denied. Reported below: 243 F. 3d 1221.

No. 01–452. PARADISE VALLEY UNIFIED SCHOOL DISTRICT *v.* JOHNSON. C. A. 9th Cir. Certiorari denied. Reported below: 251 F. 3d 1222.

No. 01–491. ARMSTRONG *v.* LA QUINTA INNS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 879.

No. 01–532. GARCIA *v.* HENRY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 579.

No. 01–534. O'DONNELL ET AL. *v.* EIDLEMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 180.

No. 01–535. CAREMARK RX, INC., ET AL. *v.* BRANDON, JONES, SANDALL, ZEIDE, KOHN, CHALAL & MUSSO ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–536. TINKLE *v.* OKLAHOMA GAS & ELECTRIC CO. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 815.

No. 01–537. WESTECH LABORATORIES, INC. *v.* DILLENBERG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 484.

No. 01–542. GEDDES ET UX. *v.* MILL CREEK COUNTRY CLUB, INC., ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 196 Ill. 2d 302, 751 N. E. 2d 1150.

No. 01–546. INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. *v.* TAYLOR MILK CO. C. A. 3d Cir. Certiorari denied. Reported below: 248 F. 3d 239.

No. 01–550. SUBMERSIBLE SYSTEMS, INC. *v.* PERFORADORA CENTRAL, S. A. DE C. V. C. A. 5th Cir. Certiorari denied. Reported below: 249 F. 3d 413.

No. 01–552. LEAVITT ET AL. *v.* CITY OF EL PASO. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1140.

No. 01–556. DECARLO *v.* ARCHIE COMIC PUBLICATIONS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 11 Fed. Appx. 26.

No. 01–557. ERMERT *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–559. TIG INSURANCE CO., INC., ET AL. *v.* MICHIGAN DEPARTMENT OF TREASURY, REVENUE DIVISION. Sup. Ct. Mich. Certiorari denied. Reported below: 464 Mich. 548, 629 N. W. 2d 402.

No. 01–560. NEW YORK ASSOCIATION OF CONVENIENCE STORES ET AL. *v.* ROTH, COMMISSIONER, DEPARTMENT OF TAXATION AND FINANCE OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 275 App. Div. 2d 520, 712 N. Y. S. 2d 220.

No. 01–561. SPEIGNER *v.* ALEXANDER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1292.

No. 01–565. AMERICAN MULTI-CINEMA, INC. *v.* CITY OF WARRENVILLE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 321 Ill. App. 3d 349, 748 N. E. 2d 746.

No. 01–566. BOARD OF ADJUSTMENT OF THE TOWNSHIP OF NORTH BERGEN *v.* B. A. P. S. NORTHEAST, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 256 F. 3d 107.

No. 01–582. ROEDLER ET AL. *v.* DEPARTMENT OF ENERGY ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 255 F. 3d 1347.

No. 01–589. CAMPBELL *v.* WASHINGTON STATE BAR ASSN. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 504, 21 P. 3d 1147.

No. 01–613. PROKOP *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 589.

No. 01–614. CUTLER ET AL. *v.* ESTATE OF AGOSTINELLI ET AL. App. Ct. Conn. Certiorari denied. Reported below: 60 Conn. App. 752, 761 A. 2d 237.

No. 01–645. RUOTOLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 7 Fed. Appx. 128.

No. 01–5887. COLEMAN *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 741 N. E. 2d 697.

No. 01–6014. DUNLAP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 250 F. 3d 1001.

No. 01–6076. SANDOVAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 241 F. 3d 549.

No. 01–6112. POLANCO, AKA POLANCO-LIBRADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 625.

No. 01–6144. SMITH *v.* WILSON COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 118.

No. 01–6150. CHANDLER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 240 F. 3d 907.

No. 01–6561. SMITH *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 556.

No. 01–6562. SINGLETON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6563. BROWN *v.* GIBSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 894.

No. 01–6568. PIERCE *v.* CITY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6570. ESSLINGER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 01–6571. BROWN *v.* PITCHER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 154.

No. 01–6573. ODRICK *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6580. RIOS *v.* INGLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 636.

No. 01–6584. JACKSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6587. BRUNS *v.* JOHNSON, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied.

No. 01–6598. FITZGERALD *v.* SCHRIVER, SUPERINTENDENT, WALLKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6599. URIARTE *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 753.

No. 01–6600. NATHAN *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–6601. MOORE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–6603. SPEARMAN *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 287.

No. 01–6608. ARMSTRONG *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 756 So. 2d 533.

No. 01–6612. KIMBLE *v.* MONTGOMERY COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 165.

No. 01–6616. EVEANS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 01–6617. SUMLAR *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 793 So. 2d 938.

No. 01–6618. MAYS *v.* NEW ENGLAND BAPTIST HOSPITAL. C. A. 1st Cir. Certiorari denied. Reported below: 14 Fed. Appx. 6.

No. 01–6624. MALONEY *v.* KING. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 69.

No. 01–6630. CHRISTEN *v.* R. J. REYNOLDS TOBACCO CO. ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6631. FURR *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6633. GILCHRIST *v.* ANTHONY, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 176.

No. 01–6634. HERRON *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 659.

No. 01–6636. GILBERT *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6637. HARPER *v.* MEDICAL SECTION, TRAVIS COUNTY JAIL. C. A. 5th Cir. Certiorari denied. Reported below: 235 F. 3d 1342.

No. 01–6638. GUILLORY *v.* SMITH ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6639. HARRIS *v.* CLARK. C. A. 7th Cir. Certiorari denied.

No. 01–6642. MCCOY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–6643. BAINES *v.* MCCULLOUGH ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6644. HOLMES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied.

No. 01–6645. HARRISON *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6646. FLOYD *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6647. HALE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 01–6648. HEIMSTRA *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6649. GRANT *v.* HOLLINS, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6650. FLANAGAN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6651. FIELD *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6652. GRIFFIN *v.* CITY OF COLUMBUS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 271.

No. 01–6653. FUN *v.* HENDRICKS, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6657. JOSEPH *v.* HOLIDAY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6659. CHAPMAN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–6662. ZENANKO *v.* CRIST, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 702.

No. 01–6663. WILLIAMS *v.* KYLER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6664. WILLIAMS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6665. TUAN VAN TRAN *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP. C. A. 3d Cir. Certiorari denied.

No. 01–6672. ASCOT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–6673. EURY *v.* EDWARDS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 156.

No. 01–6676. PARKER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 260 F. 3d 852.

No. 01–6678. YEN MAO CHIU *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6680. DAY *v.* SEABOLD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6683. BRANT *v.* SWIFT-ECKRICH, INC., DBA ARMOUR SWIFT ECKRICH CONSUMER PRODUCTS CO. C. A. 8th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 533.

No. 01–6684. BURRISS *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6691. TAYLOR *v.* HOWARDS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063.

No. 01–6697. DAVIS *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6747. KAPLAN *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 741.

No. 01–6905. MASON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 768 A. 2d 591.

No. 01–6936. CASTANEDA-ULLOA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 680.

No. 01–6957. MARTINEZ-RODRIGUEZ, AKA SANCHEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–6959. CARRASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 257 F. 3d 1045.

No. 01–6960. CALDWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 532.

No. 01–6965. WALWYN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–6972. RODRIGUEZ-MARTINEZ *v.* UNITED STATES; and ROSALES-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063 (first judgment); 273 F. 3d 392 (second judgment).

No. 01–6973. MCLAUGHLIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–6993. CLAYTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–7000. EVANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7004. LAWRACY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–7005. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 52.

No. 01–7006. TROTTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1066.

No. 01–7012. CASTELLANOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–7013. SOO YOUNG BAE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 250 F. 3d 774.

No. 01–7020. STEFFEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 251 F. 3d 1273.

No. 01–7021. RIVERA-ALONZO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 955.

No. 01–7022. LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1142.

No. 01–7024. JUSTICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 426.

No. 01–352. ARSBERRY ET AL. *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the

consideration or decision of this petition. Reported below: 244 F. 3d 558.

Rehearing Denied

No. 00–1742. ABDUR'RAHMAN *v.* BELL, WARDEN, *ante*, p. 970;

No. 01–31. HOLBROOK *v.* NATIONWIDE MUTUAL INSURANCE CO., *ante*, p. 886; and

No. 01–5036. KING *v.* WASHINGTON HILTON AND TOWERS, *ante*, p. 899. Petitions for rehearing denied.

DECEMBER 10, 2001

Certiorari Granted—Vacated and Remanded

No. 01–285. THOMS, WARDEN *v.* ROSALES-GARCIA. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Zadvydas* v. *Davis*, 533 U. S. 678 (2001). Reported below: 238 F. 3d 704.

Certiorari Dismissed

No. 01–6785. MCDONALD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in non-criminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

Miscellaneous Orders

No. 01M30. A. L. *v.* E. H. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 00–1021. RUSH PRUDENTIAL HMO, INC. *v.* MORAN ET AL. C. A. 7th Cir. [Certiorari granted, 533 U. S. 948.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1167. TAHOE-SIERRA PRESERVATION COUNCIL, INC., ET AL. *v.* TAHOE REGIONAL PLANNING AGENCY ET AL. C. A. 9th

Cir. [Certiorari granted, 533 U. S. 948.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–301. NEWLAND, WARDEN *v.* SAFFOLD. C. A. 9th Cir. [Certiorari granted, *ante*, p. 971.] Motion of respondent to dismiss the writ of certiorari as improvidently granted denied.

No. 01–593. DOLE FOOD CO. ET AL. *v.* PATRICKSON ET AL.; and
No. 01–594. DEAD SEA BROMINE CO., LTD, ET AL. *v.* PATRICKSON ET AL. C. A. 9th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 01–637. IN RE ROSCHKE; and
No. 01–6777. IN RE KIDD. Petitions for writs of mandamus denied.

Certiorari Granted

No. 01–394. CHRISTOPHER, FORMER SECRETARY OF STATE, ET AL. *v.* HARBURY. C. A. D. C. Cir. Certiorari granted. Reported below: 233 F. 3d 596.

No. 01–417. DEVLIN *v.* SCARDELLETTI ET AL. C. A. 4th Cir. Certiorari granted. Reported below: 265 F. 3d 195.

No. 01–400. BELL, WARDEN *v.* CONE. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 243 F. 3d 961.

No. 00–10666. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Given that a finding of 'brandishing,' as used in 18 U. S. C. § 924(c)(1)(A), results in an increased mandatory minimum sentence, must the fact of 'brandishing' be alleged in the indictment and proved beyond a reasonable doubt?" Reported below: 243 F. 3d 806.

Certiorari Denied

No. 01–226. ARAPAHOE COUNTY PUBLIC AIRPORT AUTHORITY *v.* FEDERAL AVIATION ADMINISTRATION ET AL.; and
No. 01–230. CITY OF GREENWOOD VILLAGE *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 242 F. 3d 1213.

No. 01–238. BMW MANUFACTURING CORP. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 241 F. 3d 1357.

No. 01–248. ULSTER HOME CARE, INC., ET AL. *v.* SPITZER, ATTORNEY GENERAL OF NEW YORK; and RUBIN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 96 N. Y. 2d 505, 757 N. E. 2d 764 (first judgment); 96 N. Y. 2d 548, 757 N. E. 2d 762 (second judgment).

No. 01–287. ADLER ET AL. *v.* DUVAL COUNTY SCHOOL BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 1330.

No. 01–372. HANNON *v.* DEPARTMENT OF JUSTICE; and TOWNSEND *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 234 F. 3d 674 (first judgment); 2 Fed. Appx. 911 (second judgment).

No. 01–387. CROMPTON CO./CIE, FKA UNIROYAL CHEMICAL LTD. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 247 F. 3d 706.

No. 01–391. GINN ET AL. *v.* UNITED STATES TRUSTEE ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–403. VILLARREAL-ALARCON ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 644.

No. 01–404. WHITE ET AL. *v.* METROPOLITAN LIFE INSURANCE CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–420. FLANIGAN ET AL. *v.* GENERAL ELECTRIC CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 242 F. 3d 78.

No. 01–421. OCEAN BULK SHIPS, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 331.

No. 01–516. BUCE *v.* ALLIANZ LIFE INSURANCE CO., FKA NORTH AMERICAN LIFE & CASUALTY CO. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 1133.

No. 01–578. WHITE ET AL. *v.* SUNDSTRAND CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 256 F. 3d 580.

No. 01–585. INTERSTATE LITHO CORP. *v.* BROWN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 255 F. 3d 19.

No. 01–586. CLARK *v.* CLARK. Sup. Ct. Utah. Certiorari denied. Reported below: 27 P. 3d 538.

No. 01–590. D'ALESSIO ET AL. *v.* NEW YORK STOCK EXCHANGE, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 258 F. 3d 93.

No. 01–591. CACCIOLA ET AL. *v.* SIMS COMMUNICATIONS, INC., ET AL. Sup. Ct. Wash. Certiorari denied.

No. 01–597. DUDA *v.* CALIFORNIA. App. Div., Super. Ct. Cal., Santa Cruz County. Certiorari denied.

No. 01–599. LEE *v.* SUN LIFE ASSURANCE COMPANY OF CANADA. C. A. 5th Cir. Certiorari denied.

No. 01–601. LOCHBAUM ET AL. *v.* ST. PAUL INSURANCE COS. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1055.

No. 01–602. KELLY, INDIVIDUALLY AND REPRESENTATIVE OF THE ESTATE OF KELLY, ET AL. *v.* CITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–604. WILBURN *v.* KAISER FOUNDATION MEDICAL GROUP ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 01–606. BEAUCLAIR, DIRECTOR, IDAHO DEPARTMENT OF CORRECTION, ET AL. *v.* PUENTE GOMEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 1118.

No. 01–607. DUJARDIN *v.* INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 9 Fed. Appx. 19.

No. 01–608. SMITH *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 271 Kan. 666, 24 P. 3d 727.

No. 01–609. SMALLWOOD *v.* SMALLWOOD. Sup. Ct. Ala. Certiorari denied. Reported below: 811 So. 2d 537.

No. 01–610. ALI *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 495.

No. 01–611. BROWN *v.* WHEAT FIRST SECURITIES, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 257 F. 3d 821.

No. 01–612. BROWN ET UX. *v.* CICHERSKI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 622.

No. 01–643. HILVETY *v.* WORLD OF POWERSPORTS, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 427.

No. 01–646. KRIZEK ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 01–683. REEVES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 255 F. 3d 389.

No. 01–689. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 682.

No. 01–5572. DOUBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 246 F. 3d 677.

No. 01–6140. BARROW *v.* WELLS, WARDEN. Sup. Ct. Ill. Certiorari denied. Reported below: 195 Ill. 2d 506, 749 N. E. 2d 892.

No. 01–6161. WESTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 255 F. 3d 873.

No. 01–6695. ALLEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6696. BROMLEY *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–6699. OBREMSKI *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 509.

No. 01–6702. JOHNSON *v.* JOHNSON ET AL. Ct. App. Mich. Certiorari denied.

No. 01–6703. MAY *v.* PIKE LAKE STATE PARK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 507.

No. 01–6705. MOORE *v.* MARR, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 254 F. 3d 1235.

No. 01–6707. BROWN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 256 Conn. 291, 772 A. 2d 1107.

No. 01–6708. TEJADA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 255 F. 3d 1.

No. 01–6711. LEDESMA ZEPEDA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 87 Cal. App. 4th 1183, 105 Cal. Rptr. 2d 187.

No. 01–6720. SNIDER *v.* ROWLEY, SUPERINTENDENT, NORTHEAST CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–6721. FRASER *v.* DENNIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 560.

No. 01–6723. FORD *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 256 F. 3d 783.

No. 01–6726. OWENS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 821 So. 2d 1043.

No. 01–6732. WITTROCK *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6733. TOURVILLE *v.* MAINE DEPARTMENT OF HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 01–6736. THOMAS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6737. THOMAS *v.* MCGINNIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6740. DENTON *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 553.

No. 01–6741. MCKAY *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 660.

No. 01–6742. BURKLEY *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6745. COLEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1154, 783 N. E. 2d 236.

No. 01–6751. DAVIS *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6755. MURPHY *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 88 Cal. App. 4th 392, 105 Cal. Rptr. 2d 779.

No. 01–6756. CARRO *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 51 Mass. App. 1103, 743 N. E. 2d 394.

No. 01–6763. ARONOVSKY *v.* NGUYEN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–6766. ROBENSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 01–6776. LAYTON *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 369.

No. 01–6778. POST *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 01–6779. F. K., MOTHER *v.* IOWA DISTRICT COURT FOR POLK COUNTY. Sup. Ct. Iowa. Certiorari denied. Reported below: 630 N. W. 2d 801.

No. 01–6782. CARRY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6784. DONALDSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6788. ROSALES *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6793. PINCKNEY *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 01–6795. BECKWITH *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–6796. ROGERS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1100.

No. 01–6799. OSBORNE *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 682.

No. 01–6802. KRONCKE *v.* SALDATE ET AL. Ct. App. Ariz. Certiorari denied.

No. 01–6803. LANGFORD *v.* ELLIS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 158.

No. 01–6804. MARTIN *v.* COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 93 Ohio St. 3d 1414, 754 N. E. 2d 261.

No. 01–6810. PORTEE *v.* HAMLETT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6812. COURTNEY *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied.

No. 01–6813. DELGADO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6828. DAVIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1066.

No. 01–6847. SMITH *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 01–6887. FOSTER *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 01–6893. FORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 245 F. 3d 890 and 15 Fed. Appx. 355.

No. 01–6913. BYRD *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 58, 548 S. E. 2d 2.

No. 01–6925. MORENO SIERRA *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 258 F. 3d 1213.

No. 01–6953. MILLIRONS *v.* SMITH, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–7010. DAVILA-MARRERO *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 4 Fed. Appx. 45.

No. 01–7027. CALHOUN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 01–7031. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 876.

No. 01–7033. WYATT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 676.

No. 01–7034. DIAZ-PAULINO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 16 Fed. Appx. 14.

No. 01–7035. MANUKIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 715.

No. 01–7036. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–324. WILKINSON, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. *v.* FLAGNER. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 241 F. 3d 475.

No. 01–397. SCHOLASTIC CORP. ET AL. *v.* TRUNCELLITO ET AL. C. A. 2d Cir. Motion of American Institute of Certified Public Accountants for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 252 F. 3d 63.

Rehearing Denied

No. 01–5195. SAPP *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 908. Petition for rehearing denied.

DECEMBER 11, 2001

Certiorari Denied

No. 01–7288 (01A443). PARKER *v.* GEORGIA STATE BOARD OF PARDONS AND PAROLES ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 275 F. 3d 1032.

DECEMBER 12, 2001

Certiorari Granted—Question Certified. (See No. 01–339, *ante*, p. 157.)

Miscellaneous Order

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928.] The petitions for certiorari in these cases presented the same questions at issue in No. 00–878, *Mathias et al.* v. *WorldCom Technologies, Inc., et al.* [certiorari granted, 532 U. S. 903], plus the additional question of subject-matter jurisdiction under 28 U. S. C. § 1331. We granted certiorari only on the additional question, and held the other questions pending their resolution in *Mathias, supra.* Oral argument has revealed, however, that we may be unable to reach the merits of the questions presented in *Mathias.* Therefore, to ensure that we have jurisdiction over all of the questions at issue in these cases, we grant the writ of certiorari to the United States Court of Appeals for the Fourth Circuit on the remaining questions presented by the petitions, and request that the parties brief those questions.

Briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 11, 2002. Respondents' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 1, 2002. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 15, 2002. Petitioners' opening briefs and respondents' brief shall not exceed 25 pages. Petitioners' reply briefs, if any, shall not exceed 15 pages.

This Court's Rule 29.2 is suspended in these cases. JUSTICE O'CONNOR took no part in the consideration or decision of this order.

DECEMBER 21, 2001

Dismissal Under Rule 46

No. 01–6383. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 254 F. 3d 511.

JANUARY 3, 2002

Certiorari Denied

No. 01–7389 (01A459). TUCKER *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Ct. Common Pleas of Sumter County, S. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

JANUARY 4, 2002

Dismissal Under Rule 46

No. 01–6948. BATTLE *v.* DAVIS. Ct. App. D. C. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 00–1853. SWIERKIEWICZ *v.* SOREMA N. A. C. A. 2d Cir. [Certiorari granted, 533 U. S. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 01–309. HOPE *v.* PELZER ET AL. C. A. 11th Cir. Certiorari granted.* Reported below: 240 F. 3d 975.

No. 01–419. CITY OF COLUMBUS ET AL. *v.* OURS GARAGE AND WRECKER SERVICE, INC., ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 257 F. 3d 506.

No. 01–455. FRANCONIA ASSOCIATES ET AL. *v.* UNITED STATES; and GRASS VALLEY TERRACE ET AL. *v.* UNITED STATES.

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*[REPORTER'S NOTE: For amendment of this order, see, *post*, p. 1120.]

C. A. Fed. Cir. Certiorari granted limited to the following questions: "1. Whether a breach of contract claim accrues for purposes of 28 U. S. C. § 2501 when Congress enacts a statute alleged to abridge a contractual right to freedom from regulatory covenants upon prepayment of government mortgage loans. 2. Whether a Fifth Amendment takings claim accrues for purposes of 28 U. S. C. § 2501 when Congress enacts a statute alleged to abridge a contractual right to freedom from regulatory covenants upon prepayment of government mortgage loans." Reported below: 240 F. 3d 1358 (first judgment); 7 Fed. Appx. 928 (second judgment).

No. 01–518. BE&K CONSTRUCTION CO. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 6th Cir. Certiorari granted limited to the following question: "Did the Court of Appeals err in holding that under *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 U. S. 731 (1983), the NLRB may impose liability on an employer for filing a losing retaliatory lawsuit, even if the employer could show the suit was not objectively baseless under *Professional Real Estate Investors, Inc.* v. *Columbia Pictures Industries, Inc.*, 508 U. S. 49 (1993)?" Reported below: 246 F. 3d 619.

No. 01–595. UNITED STATES *v.* RUIZ. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 241 F. 3d 1157.

No. 01–631. UNITED STATES *v.* DRAYTON ET AL. C. A. 11th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 231 F. 3d 787.

No. 01–687. UNITED STATES *v.* COTTON ET AL. C. A. 4th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 261 F. 3d 397.

No. 01–651. CHASE MANHATTAN BANK *v.* TRAFFIC STREAM (BVI) INFRASTRUCTURE LTD. C. A. 2d Cir. Motion of Government of United Kingdom of Great Britain and Northern Ireland for leave to file a brief as *amicus curiae* granted. Certiorari granted. Reported below: 251 F. 3d 334.

JANUARY 7, 2002

Dismissal Under Rule 46

No. 01–854. COSTA *v.* DESERT PALACE, INC., DBA CAESARS PALACE HOTEL & CASINO. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 268 F. 3d 882.

Certiorari Dismissed

No. 01–6875. FORD *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–7029. THOMAS *v.* CARTER ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–7081. CAMARENA *v.* DEPARTMENT OF THE ARMY. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–6932. JOHNSON *v.* NEW YORK. Ct. App. N. Y. Motion of petitioner for leave to proceed *in forma pauperis* denied, and

certiorari dismissed. See this Court's Rule 39.8. Reported below: 96 N. Y. 2d 920, 758 N. E. 2d 663.

No. 01–6944. HERRON *v.* WOODRUFF ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2259. IN RE DISBARMENT OF WISEHART. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2262. IN RE DISBARMENT OF ESTRINE. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. 01M31. WEIDNER *v.* OREGON STATE CORRECTIONAL INSTITUTION ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Final motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $297,888.18 to be paid as follows: 42% each by Nebraska and Wyoming, 10% by the United States, and 6% by Basin Electric Power Cooperative. [For earlier decision herein, see, *e. g.*, *ante*, p. 40.]

No. 00–878. MATHIAS ET AL. *v.* WORLDCOM TECHNOLOGIES, INC., ET AL. C. A. 7th Cir. [Certiorari granted, 532 U. S. 903.] Motion of respondent Illinois Bell Telephone Co. for leave to file a supplemental brief after argument denied. Motion of petitioners for leave to file a supplemental brief after argument denied without prejudice to filing a brief addressing only the jurisdictional question. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928 and *ante*, p. 1072.] Motion of Illinois to have briefs in companion case, *Mathias et al.* v. *WorldCom Technologies, Inc., et al.*, No. 00–878 [certiorari granted, 532 U. S. 903], considered as briefs *amicus curiae* in these cases granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 00–1751. ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, ET AL. *v.* SIMMONS-HARRIS ET AL.;
No. 00–1777. HANNA PERKINS SCHOOL ET AL. *v.* SIMMONS-HARRIS ET AL.; and
No. 00–1779. TAYLOR ET AL. *v.* SIMMONS-HARRIS ET AL. C. A. 6th Cir. [Certiorari granted, 533 U. S. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–147. SECURITIES AND EXCHANGE COMMISSION *v.* ZANDFORD. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1015.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 01–344. THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. *v.* WESTERN STATES MEDICAL CENTER ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 992.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 01–826. IN RE VEY;
No. 01–7086. IN RE BROCKINGTON;
No. 01–7207. IN RE QUARLES;
No. 01–7246. IN RE VALLERY;
No. 01–7286. IN RE SMITH; and
No. 01–7379. IN RE DAVIS. Petitions for writs of habeas corpus denied.

No. 01–6831. IN RE SCHAPIRO;
No. 01–6848. IN RE REMOI;
No. 01–6860. IN RE WILLIAMS;
No. 01–7016. IN RE COSTILLO; and
No. 01–7017. IN RE EBEH. Petitions for writs of mandamus denied.

No. 01–6876. IN RE GREEN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 00–7613. HILLS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 00–9234. RICHARDSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 233 F. 3d 223.

No. 01–38. CALIFORNIA, ACTING BY AND THROUGH THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 1 Fed. Appx. 678.

No. 01–368. SADERUP ET AL. *v.* COMEDY III PRODUCTIONS, INC. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 387, 21 P. 3d 797.

No. 01–377. WILSON *v.* ATLAS WIRELINE SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 260 F. 3d 623.

No. 01–432. CONSOLIDATED FREIGHTWAYS INC. ET AL. *v.* CRAMER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 683.

No. 01–435. CARPENTER *v.* ISRAEL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 9 Fed. Appx. 43.

No. 01–437. DILLON ET AL. *v.* POWELL, SECRETARY OF STATE, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–441. MARTIN ET AL. *v.* MEDTRONIC, INC. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 573.

No. 01–445. WYANDOTTE NATION, FKA WYANDOTTE TRIBE OF OKLAHOMA *v.* SAC AND FOX NATION OF MISSOURI ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 240 F. 3d 1250.

No. 01–449. AUSTIN *v.* AMERICAN ASSOCIATION OF NEUROLOGICAL SURGEONS. C. A. 7th Cir. Certiorari denied. Reported below: 253 F. 3d 967.

No. 01–493. SEXTON *v.* CHINO VALLEY INDEPENDENT FIRE DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 660.

No. 01–508. FELT *v.* OFFICE OF THRIFT SUPERVISION. C. A. 5th Cir. Certiorari denied. Reported below: 255 F. 3d 220.

No. 01–510. UNITED STATES EX REL. GARIBALDI ET AL. *v.* ORLEANS PARISH SCHOOL BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 244 F. 3d 486.

No. 01–526. COSTO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 248 F. 3d 863.

No. 01–543. GLOBAL NAPS, INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 247 F. 3d 252.

No. 01–548. SOCIETA COOPERATIVA L'ARCIERE *v.* KOPKE ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 245 Wis. 2d 396, 629 N. W. 2d 662.

No. 01–562. WISE *v.* FRYAR. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 49 S. W. 3d 450.

No. 01–563. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND ET AL. *v.* BASIC AMERICAN INDUSTRIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 252 F. 3d 911.

No. 01–568. CITY AND COUNTY OF SAN FRANCISCO *v.* FITZWATER. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 695.

No. 01–569. LYON ET AL. *v.* AGUSTA S. P. A. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 252 F. 3d 1078.

No. 01–573. KENTUCKY RETIREMENT SYSTEMS ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 6th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 443.

No. 01–587. LEMAIRE ET AL. *v.* DANOS & CUROLE MARINE CONTRACTORS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1059.

No. 01–596. CITY OF TACOMA ET AL. *v.* QWEST CORP. C. A. 9th Cir. Certiorari denied. Reported below: 260 F. 3d 1160.

No. 01–603. DELUXE CORP. *v.* FRANCHISE TAX BOARD OF CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 01–615. MAHARG, INC. *v.* VAN WERT SOLID WASTE MANAGEMENT DISTRICT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 544.

No. 01–616. BUCCELLA *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 434 Mass. 473, 751 N. E. 2d 373.

No. 01–617. BARNETT *v.* FARMON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–622. MAWHIRT *v.* AHMED ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 125.

No. 01–623. LEVINE ET AL. *v.* MARCH. C. A. 6th Cir. Certiorari denied. Reported below: 249 F. 3d 462.

No. 01–624. LAFAVRE, AKA HOWERTER, ET AL. *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 799.

No. 01–626. JOHNSON, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JOHNSON, DECEASED *v.* TAYLOR ET AL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 01–628. LANTZ *v.* BANKS, CLERK, CITY OF SOUTHFIELD. Ct. App. Mich. Certiorari denied. Reported below: 245 Mich. App. 621, 628 N. W. 2d 583.

No. 01–629. MICHIGAN STATE UNEMPLOYMENT AGENCY, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES *v.* FRANK, TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 252 F. 3d 852.

No. 01–630. MORALES *v.* P. F. LABORATORIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1056.

No. 01–632. NOBACK *v.* TRANCISCO INDUSTRIES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 448.

No. 01–633. CRAWLEY *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 257 F. 3d 395.

No. 01–634. BABB *v.* THOMPSON ET AL. Ct. App. N. C. Certiorari denied. Reported below: 142 N. C. App. 212, 543 S. E. 2d 534.

No. 01–636. BEST ET UX. *v.* SEARS, ROEBUCK & CO. ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 278 App. Div. 2d 441, 718 N. Y. S. 2d 397.

No. 01–638. WISCONSIN STATE ENGINEERING ASSN. ET AL. *v.* LIGHTBOURN, ACTING SECRETARY, WISCONSIN DEPARTMENT OF ADMINISTRATION, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 243 Wis. 2d 512, 627 N. W. 2d 807.

No. 01–642. HOSTIN *v.* ARIZONA SCHOOLS FOR THE DEAF AND BLIND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 757.

No. 01–644. SCHMITT *v.* SCHMITT. C. A. 7th Cir. Certiorari denied.

No. 01–647. LIZZI *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 255 F. 3d 128.

No. 01–649. SHANKS, DBA FLITELINE MAINTENANCE, INC., ET AL. *v.* ALLIEDSIGNAL, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063.

No. 01–650. RUSHFORD *v.* CAINES, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF FIELDS, DECEASED, ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 01–655. MC ASSOCIATES *v.* TOWN OF CAPE ELIZABETH. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 773 A. 2d 439.

No. 01–656. A. D. BEDELL WHOLESALE CO., INC., ET AL. *v.* PHILIP MORRIS INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 239.

No. 01–658. MCGUIRE *v.* LOWE'S HOME CENTERS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 338.

No. 01–659. CONNELLY ET AL. *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 271 Kan. 944, 26 P. 3d 1246.

No. 01–661. EGBUNE *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 01–663. MONTGOMERY *v.* TRISLER. Ct. App. Ind. Certiorari denied. Reported below: 741 N. E. 2d 351.

No. 01–665. LEVAKE *v.* INDEPENDENT SCHOOL DISTRICT NO. 656 ET AL. Ct. App. Minn. Certiorari denied. Reported below: 625 N. W. 2d 502.

No. 01–666. FERGUSON *v.* HANEY. C. A. 3d Cir. Certiorari denied. Reported below: 248 F. 3d 1129.

No. 01–667. GAUDELLI *v.* EISNER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1055.

No. 01–668. GREENE *v.* IMAGINE ENTERTAINMENT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–669. HAZARD CONTROL TECHNOLOGIES, INC., FKA FUEL BUSTER LABORATORIES, INC. *v.* HAZARD MITIGATION SUPPLY, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 626.

No. 01–670. HOPE LUTHERAN CHURCH OF HASTINGS, MINNESOTA *v.* SHEPHERD OF THE VALLEY LUTHERAN CHURCH OF HASTINGS, MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 626 N. W. 2d 436.

No. 01–671. RIO PETROLEUM, INC. *v.* BROWN. C. A. 5th Cir. Certiorari denied. Reported below: 253 F. 3d 702.

No. 01–672. HENSLEY ET AL. *v.* NORTHWEST PERMANENTE P. C. RETIREMENT PLAN AND TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 258 F. 3d 986.

No. 01–675. LEE *v.* MCKENZIE. C. A. 5th Cir. Certiorari denied. Reported below: 259 F. 3d 372.

No. 01–676. LOVELL *v.* CLAIBORNE MANOR NURSING HOME, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–686. UNITED HAULERS ASSN., INC., ET AL. *v.* ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 261 F. 3d 245.

No. 01–693. HIRSCHFELD *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 282 App. Div. 2d 337, 726 N. Y. S. 2d 3.

No. 01–697. YEAMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 248 F. 3d 223.

No. 01–700. KIM ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 265 F. 3d 1017.

No. 01–702. YALOWIZER ET AL. *v.* TOWN OF RANCHESTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 745.

No. 01–703. COMINSKY *v.* MALNER ET AL. Ct. App. Ohio, Lake County. Certiorari denied.

No. 01–708. BOSTON MEDICAL CENTER *v.* SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 285. C. A. 1st Cir. Certiorari denied. Reported below: 260 F. 3d 16.

No. 01–720. CHILINGIRIAN *v.* ELLIS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 157.

No. 01–725. WATSON ET AL. *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 262 F. 3d 1292.

No. 01–727. FERRO ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 252 F. 3d 964.

No. 01–744. SCHRODER ET AL. *v.* BUSH, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 263 F. 3d 1169.

No. 01–763. SANTOS *v.* POTTER, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 490.

No. 01–770. SANTANA-MADERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 260 F. 3d 133.

No. 01–773. BACH ET AL. *v.* MASON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 656.

No. 01–781. WILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 245 F. 3d 750.

No. 01–786. SEGARS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 358.

No. 01–787. RAMBACHER ET VIR *v.* ROSSOTTI, COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 221.

No. 01–804. FRY *v.* MARTINEZ, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 1264.

No. 01–806. ANDERSON *v.* UNITED STATES;
No. 01–7087. LAHUE *v.* UNITED STATES; and

No. 01–7152. LaHUE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 261 F. 3d 993.

No. 01–812. MORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 191.

No. 01–813. TECHNICAL ORDNANCE, INC., ET AL. *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 244 F. 3d 641.

No. 01–828. GROGAN ET AL. *v.* CITY OF CINCINNATI EX REL. COSGROVE ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 141 Ohio App. 3d 733, 753 N. E. 2d 256.

No. 01–830. RENOBATO *v.* BUREAU OF THE PUBLIC DEBT. C. A. 5th Cir. Certiorari denied. Reported below: 250 F. 3d 739.

No. 01–831. RIZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 247 F. 3d 1191.

No. 01–840. IN RE YOUNG. C. A. 8th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 396.

No. 01–845. NICHOLAS *v.* NORTH COLORADO MEDICAL CENTER, INC., ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 27 P. 3d 828.

No. 01–850. MILLS *v.* WISER OIL CO. Ct. App. Ky. Certiorari denied.

No. 01–5009. CUCCINIELLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–5150. OLNEY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–5361. CLOUD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–5413. OLUFEMI *v.* DeKALB COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES. C. A. 11th Cir. Certiorari denied.

No. 01–5420. ORTLOFF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–5462. COCKERHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 237 F. 3d 1179.

No. 01–5502. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 157.

No. 01–5510. SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 01–5910. OLIVIER *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 01–5955. EMBREY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–6011. PAWLYK *v.* LAMBERT, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 248 F. 3d 815.

No. 01–6024. MITCHELL *v.* HARRAH'S CASINO. C. A. 8th Cir. Certiorari denied.

No. 01–6108. MILLS *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 1st Cir. Certiorari denied. Reported below: 244 F. 3d 1.

No. 01–6127. CARTER *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 589.

No. 01–6225. GRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–6263. UPSHAW *v.* UNITED STATES; and
No. 01–6466. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1144.

No. 01–6274. BROWN *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 255 F. 3d 1273.

No. 01–6283. KIMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 246 F. 3d 800.

No. 01–6421. JORDAN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 786 So. 2d 987.

No. 01–6430. ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 248 F. 3d 434.

No. 01–6549. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 256 F. 3d 217.

No. 01–6591. WASHINGTON *v.* FIRST DATA RESOURCES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 484.

No. 01–6710. BUTTS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 273 Ga. 760, 546 S. E. 2d 472.

No. 01–6730. TAYLOR *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 808 So. 2d 1215.

No. 01–6759. APICELLA *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 809 So. 2d 865.

No. 01–6794. NICHOLS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–6801. HERNANDEZ ANZURES *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 968.

No. 01–6814. HARRIS *v.* WORKERS' COMPENSATION APPEALS BOARD OF CALIFORNIA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–6815. HERNANDEZ *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 824.

No. 01–6820. BROWN *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6823. ORYANG *v.* BULLARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6824. BISHOP *v.* DISCHNER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 891.

No. 01–6827. ERVIN *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 533.

No. 01–6832. ROBERSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–6837. WILLIAMS *v.* MANHATTAN EAST SUITES HOTELS ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–6838. WEST *v.* UTAH NON-PROFIT HOUSING CORP. Sup. Ct. Utah. Certiorari denied.

No. 01–6839. TIBBS *v.* ISLAND CREEK COAL CO. Sup. Ct. Va. Certiorari denied.

No. 01–6840. JACOBS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 803 So. 2d 933.

No. 01–6842. RUIZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6843. NAMAZI *v.* UNIVERSITY OF CINCINNATI COLLEGE OF MEDICINE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 3 Fed. Appx. 482.

No. 01–6844. BRUMLEY *v.* SIMMONS, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 749.

No. 01–6845. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–6849. STEELE *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6850. WISE *v.* MORGAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6851. TORRES *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6852. VILLASENOR *v.* LAMARQUE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6854. SMITH *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6857. WOODS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6859. WILLIAMS *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1104.

No. 01–6861. THOMAS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6862. SARMIENTO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6865. CALLICUTT *v.* CHILDS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6866. ESPINOZA *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 01–6867. CHARLES *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6868. BOULINEAU *v.* ROULAIN, DEPUTY WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1083.

No. 01–6869. COSEY *v.* TREON, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6871. COOPER *v.* ARIZONA ET AL. Ct. App. Ariz. Certiorari denied.

No. 01–6872. ENSMINGER *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–6873. JACKSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6877. ISOM *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 750 So. 2d 734.

No. 01–6880. HINKLE *v.* COUNTZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6881. HARRIS *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 01–6882. HINKLE *v.* JOHNSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–6883. GRANT *v.* O'KELLY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 161.

No. 01–6885. FRANCOIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–6886. GUILLEN *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–6888. FORD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–6889. HICKS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6890. FERGUSON *v.* ALABAMA STATE LEGISLATURE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1363.

No. 01–6892. HAYES *v.* BARBO ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6894. GAY *v.* FURLONG, ATTORNEY GENERAL OF COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 612.

No. 01–6895. HYMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–6896. HALL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6897. GARDNER *v.* SEABOLD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6898. GRAVES *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6899. FARMER *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 01–6901. DOGGETT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6902. DOMINGUE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–6904. KAUZLARICH *v.* YARBROUGH ET AL. Ct. App. Wash. Certiorari denied. Reported below: 105 Wash. App. 632, 20 P. 3d 946.

No. 01–6907. GRAHAM *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6908. BRENDA H. ET VIR *v.* ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. Y. Certiorari denied. Reported below: 96 N. Y. 2d 896, 756 N. E. 2d 80.

No. 01–6912. BALL *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 569.

No. 01–6915. O'CONNELL *v.* MILLER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 434.

No. 01–6917. VANG *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6919. HARRIS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1062.

No. 01–6920. NEALE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6922. GOSS *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6923. THURSTON *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 01–6924. WELCH *v.* CAREY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–6926. SYDNOR *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 365 Md. 205, 776 A. 2d 669.

No. 01–6927. PIERCE *v.* JOHNSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6930. JOHNSON *v.* NEW YORK CITY EMPLOYEES INCOME RETIREMENT SYSTEM PENSION PLAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 11 Fed. Appx. 20.

No. 01–6931. BOLDEN *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–6934. BAYOUD *v.* MIMS ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–6935. CARPENTER *v.* LOCK, SUPERINTENDENT, CENTRAL MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 257 F. 3d 775.

No. 01–6938. HARRISON *v.* GREINER, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 12 Fed. Appx. 56.

No. 01–6940. HANSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 798 So. 2d 733.

No. 01–6941. HOOKER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–6942. FLAGG *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–6943. HUETT *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–6945. HOLLINGSWORTH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 772 So. 2d 580.

No. 01–6946. INGE *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6949. REUTER *v.* SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 01–6950. PIERCE *v.* HALL, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied.

No. 01–6951. ALLEN *v.* RUSSELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 551.

No. 01–6952. NEWMAN *v.* ALLSTATE INSURANCE CO. ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 42 S. W. 3d 920.

No. 01–6955. MISENHEIMER *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 27 P. 3d 273.

No. 01–6958. WILLIAMS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 22 P. 3d 702.

No. 01–6962. LOPEZ *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 793 So. 2d 947.

No. 01–6963. JEFFREYS *v.* UNITED TECHNOLOGIES CORP. C. A. 2d Cir. Certiorari denied. Reported below: 242 F. 3d 365.

No. 01–6966. BECK, FKA VANDERBECK *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 01–6968. DOGAN *v.* ROE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 612.

No. 01–6969. COOLEY *v.* PLILER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 7 Fed. Appx. 703.

No. 01–6970. DELISI *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1065.

No. 01–6971. O'NEILL *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 792 So. 2d 474.

No. 01–6976. PIGGIE *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 01–6977. ARROYO *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–6982. FLOYD *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 143 N. C. App. 128, 545 S. E. 2d 238.

No. 01–6983. DAKER *v.* GEORGIA; and
No. 01–6984. DAKER *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 243 Ga. App. 848, 533 S. E. 2d 393.

No. 01–6985. BORINSTEIN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–6986. BREED'LOVE *v.* GIBSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 737.

No. 01–6989. SARRATO ALVARADO *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–6990. STRACHN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 789 So. 2d 526.

No. 01–6991. CARTER *v.* NEWKIRK. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 461.

No. 01–6992. SMITH *v.* ROPER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 393.

No. 01–6994. CONTRERAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–6995. CHANEY *v.* CHICAGO TRANSIT AUTHORITY. C. A. 7th Cir. Certiorari denied.

No. 01–6998. CARTER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–7001. CARROLL *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 243 F. 3d 1097.

No. 01–7003. KIGHT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 784 So. 2d 396.

No. 01–7007. EZELL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7011. COMPO *v.* BROWN ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7019. SCHMITT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 262 Va. 127, 547 S. E. 2d 186.

No. 01–7023. ENOS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 01–7028. DOSS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–7030. EDWARDS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 01–7037. MURPHY *v.* CIRCUIT COURT OF THE CITY OF ALEXANDRIA, VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–7038. GILYARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 261 F. 3d 506.

No. 01–7039. ROSALES FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 704.

No. 01–7041. ARLT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 252 F. 3d 1032 and 15 Fed. Appx. 431.

No. 01–7042. NICHOLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 250.

No. 01–7045. TEMPELMAN ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 12 Fed. Appx. 18.

No. 01–7047. GAMARRA-BETANCOURT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 559.

No. 01–7048. HUTCHINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 397.

No. 01–7049. HENDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 487.

No. 01–7053. TATE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 331.

No. 01–7055. KEISSLING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1140.

No. 01–7056. TUCKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7057. VIRGEN-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 276.

No. 01–7060. CHAPA-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 1060.

No. 01–7061. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 334.

No. 01–7067. WEHMHOEFER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 979.

No. 01–7068. NORTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 98.

No. 01–7072. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 480.

No. 01–7074. DUNLAP *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 36 P. 3d 778.

No. 01–7075. CARMICKEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 263 F. 3d 829.

No. 01–7078. FAISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 126.

No. 01–7079. FLOWERS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7080. MOYHERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 Fed. Appx. 62.

No. 01–7083. FISHER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 779 A. 2d 348.

No. 01–7084. HOLLAND *v.* UNITED STATES; and
No. 01–7130. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 262 F. 3d 233.

No. 01–7088. THRIFT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–7089. VALENTIN-BERNABE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7091. CORTEZ-FLORES *v.* UNITED STATES; MARTINEZ-ORTEGA *v.* UNITED STATES; and PINEDA-BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103 (first and second judgments) and 1104 (third judgment).

No. 01–7100. ORTIZ-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7102. WILLOCKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1067.

No. 01–7106. APONTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 213.

No. 01–7108. SPANN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 276 F. 3d 582.

No. 01–7111. REYES-TORRES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1111.

No. 01–7112. WEBB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 168.

No. 01–7117. JENNINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 782 So. 2d 853.

No. 01–7118. RAMIREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1104.

No. 01–7121. MARIN-CARDONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7122. COLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 393.

No. 01–7123. CHRISTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 123.

No. 01–7126. MCLEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 184.

No. 01–7132. REGA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 263 F. 3d 18.

No. 01–7138. ALFARO-ROJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 2 Fed. Appx. 794.

No. 01–7140. MOSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 252 F. 3d 993.

No. 01–7141. MEDINA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7145. COMPEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7148. TULIO CANTILLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7150. OJEDA-GUERRERO *v.* UNITED STATES; CRUZ-ISLAS *v.* UNITED STATES; MUNOZ-FERNANDEZ *v.* UNITED STATES; MARTINEZ-WATSON *v.* UNITED STATES; and ORLANDO BENITEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099 (first and second judgments), 1102 (third and fourth judgments), and 1103 (fifth judgment).

No. 01–7151. ISRAEL MUNOZ *v.* UNITED STATES; CHAVEZ *v.* UNITED STATES; FELIX-DUENAS, AKA ACUNA-DUENAS *v.* UNITED STATES; GUITRON-REYEGOSA *v.* UNITED STATES; HERNANDEZ-PEREZ *v.* UNITED STATES; MOLINA-VALENZUELA, AKA GUSTAVO, ET AL. *v.* UNITED STATES; MORA *v.* UNITED STATES; OJEDA-AGUNDEZ *v.* UNITED STATES (Reported below: 18 Fed. Appx. 533); RODRIGUEZ *v.* UNITED STATES; SALINAS-SERVIN *v.* UNITED STATES; and VALENZUELA-HOLGUIN, AKA VALENZUELA, AKA DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7155. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 770.

No. 01–7157. MACKEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 265 F. 3d 457.

No. 01–7159. MARTINEZ-LOZANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7162. BRUNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 727.

No. 01–7163. BOJORQUEZ-BRACAMONTES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 991.

No. 01–7164. VILLARREAL-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7165. ZUL-ALCANTARA *v.* UNITED STATES; MORALES-RAZO *v.* UNITED STATES; and PEREZ-PALOMARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100 (second judgment), 1101 (third judgment), and 1102 (first judgment).

No. 01–7166. YOUNG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 632.

No. 01–7172. AGUSTO HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 394.

No. 01–7174. GLEASON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 810.

No. 01–7179. SANFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 436.

No. 01–7180. SIMMONDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 262 F. 3d 468.

No. 01–7182. HIEU TRUNG TRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7185. LUCAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 310.

No. 01–7187. CUEVAS-AQUINO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7188. CAMPBELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 614.

No. 01–7190. IGNACIO LAZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7191. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 75.

No. 01–7194. OSIRIS PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7195. OPARA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 533.

No. 01–7196. ZUNIGA-RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099.

No. 01–7199. HOLMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7200. GARCIA-DE LOERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7202. FAVELA-MORALES *v.* UNITED STATES; MARTINEZ-CLOSNER *v.* UNITED STATES; and CARRIZALEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101 (first judgment) and 1102 (second and third judgments).

No. 01–7210. MENDOZA-MEDRANO, AKA TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7213. AVITA-AVITA *v.* UNITED STATES (Reported below: 273 F. 3d 1102); BALLES-ZUNIGA *v.* UNITED STATES (273 F. 3d 1102); BATRES-BRICIO *v.* UNITED STATES (273 F. 3d 1102); CASTILLO-RODRIGUEZ *v.* UNITED STATES (273 F. 3d 1103); FLORES-SANCHEZ *v.* UNITED STATES (273 F. 3d 1103); LOPEZ-ESPINOZA *v.* UNITED STATES (273 F. 3d 1102); LOPEZ-ADAN *v.* UNITED STATES (273 F. 3d 1103); LEMUS *v.* UNITED STATES (273 F. 3d 1103); ONTIVEROS-SANCHEZ *v.* UNITED STATES (273 F. 3d 1102); PRUNEDA-AGUILAR *v.* UNITED STATES (273 F. 3d 1102); and REBOLLAR-YANEZ *v.* UNITED STATES (273 F. 3d 1102). C. A. 5th Cir. Certiorari denied.

No. 01–7214. CUEVAS-SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7220. MARTINEZ-SAENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7227. STRICKLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 261 F. 3d 1271.

No. 01–7228. ALARCON-PINON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 261 F. 3d 416.

No. 01–7232. SANTISTEBAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7234. VASQUEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7237. TRIGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 450.

No. 01–7240. MARTINEZ-CAMPOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7242. MAYA-MOSCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 614.

No. 01–7243. KRAUSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 129.

No. 01–7244. WHITAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 392.

No. 01–7245. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 106.

No. 01–7248. KIFER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–7250. OMORUYI, AKA OLORO, AKA PIERCE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 260 F. 3d 291.

No. 01–7253. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 396.

No. 01–7254. RANKIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 261 F. 3d 735.

No. 01–7255. STARCHER *v.* WINGARD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 383.

No. 01–7256. RODRIGUEZ-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7295. HOLLINGSWORTH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 257 F. 3d 871.

No. 01–7298. PIZANO-CORONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7301. ARMIJO-PUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–7305. SNAGGS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 20 Fed. Appx. 12.

No. 01–446. WELLINGTON TRADE, INC., DBA CONTAINERHOUSE *v.* UNITED STATES. C. A. 11th Cir. Motion of Richard E. Flamm for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied.

No. 01–641. HISTED *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 263 F. 3d 158.

Rehearing Denied

No. 00–1780. ROCKEFELLER *v.* NEW MEXICO ET AL., *ante*, p. 819;

No. 00–1788. IN RE POLYAK, *ante*, p. 812;

No. 00–1796. BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION ET AL.; BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION; and BUSH *v.* ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION, *ante*, p. 819;

No. 00–1877. CONTRERAS *v.* SUNCAST CORP. ET AL., *ante*, p. 824;

No. 00–1883. JOHNSTON *v.* MONROE COUNTY COURT, *ante*, p. 824;

No. 00–10315. COLEMAN *v.* TEXAS, *ante*, p. 851;

No. 00–10369. CARTER *v.* JOHNSTON ET AL., *ante*, p. 854;

No. 00–10383. SCHIEBLE *v.* DORCHESTER COUNTY, *ante*, p. 855;

No. 00–10392. NOWIK *v.* NORTH DAKOTA, *ante*, p. 855;

No. 00–10407. JACKSON *v.* MECKLENBURG COUNTY ET AL., *ante*, p. 856;

No. 00–10532. IN RE YOUNG, *ante*, p. 811;

No. 00–10540. YOUNG *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 864;

No. 00–10695. ANGERAMI *v.* UNITED STATES, *ante*, p. 992;

No. 00–10806. MCFADDEN *v.* PADULA, WARDEN, ET AL., *ante*, p. 880;

No. 01–163. IN RE RETTIG, *ante*, p. 810;

No. 01–203. BLOUGH *v.* UNITED STATES ET AL., *ante*, p. 894;

No. 01–405. COLE *v.* DOC'S DRUGS, LTD., *ante*, p. 996;

No. 01–484. GOONAN *v.* KANE ET AL., *ante*, p. 997;

No. 01–5104. OWSLEY *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 903;

No. 01–5349. IN RE YOUNG, *ante*, p. 810;

No. 01–5374. WHEELER *v.* MORGAN ET AL., *ante*, p. 919;

No. 01–5429. IN RE YOUNG, *ante*, p. 812;

No. 01–5496. ENSIGN *v.* METROPOLITAN LIFE INSURANCE CO., *ante*, p. 956;

No. 01–5782. JOERGER *v.* ASHCROFT, ATTORNEY GENERAL, *ante*, p. 1023;

No. 01–5818. ARNOLD *v.* WOOD ET AL., *ante*, p. 975;

No. 01–5855. TAYLOR *v.* ADE ET UX., *ante*, p. 976;

No. 01–6205. GRAHAM *v.* PRINCIPI, SECRETARY OF VETERANS AFFAIRS, ET AL., *ante*, p. 979; and

No. 01–6278. CARLSON *v.* VIRGINIA, *ante*, p. 1004. Petitions for rehearing denied.

No. 00–1866. GARCIA *v.* UNITED STATES, *ante*, p. 823;

No. 01–209. BREEN *v.* UNITED STATES, *ante*, p. 894; and

No. 01–323. WINKER *v.* MCDONNELL DOUGLAS CORP., *ante*, p. 994. Motions of petitioners for leave to proceed *in forma pauperis* granted. Petitions for rehearing denied.

JANUARY 10, 2002

Certiorari Denied

No. 01–7520 (01A504). ALSTON *v.* LEE, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution.

No. 01–7631 (01A506). ALSTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 355 N. C. 216, 559 S. E. 2d 791 (first judgment).

JANUARY 11, 2002

Certiorari Granted

No. 01–463. UNITED STATES *v.* FIOR D'ITALIA, INC. C. A. 9th Cir. Certiorari granted. Petitioner's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 25, 2002. Respondent's brief is to be filed with

the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 27, 2002. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 15, 2002. This Court's Rule 29.2 is suspended in this case. Reported below: 242 F. 3d 844.

No. 01–488. RING *v.* ARIZONA. Sup. Ct. Ariz. Certiorari granted. Petitioner's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 25, 2002. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 27, 2002. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 15, 2002. This Court's Rule 29.2 is suspended in this case. Reported below: 200 Ariz. 267, 25 P. 3d 1139.

No. 01–679. GONZAGA UNIVERSITY ET AL. *v.* DOE. Sup. Ct. Wash. Certiorari granted limited to Question 1 presented by the petition. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 25, 2002. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 27, 2002. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 15, 2002. This Court's Rule 29.2 is suspended in this case. Reported below: 143 Wash. 2d 687, 24 P. 3d 390.

No. 01–682. BARNES, IN HER OFFICIAL CAPACITY AS MEMBER OF THE BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI, ET AL. *v.* GORMAN. C. A. 8th Cir. Certiorari granted. Petitioners' brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, February 25, 2002. Respondent's brief is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 27, 2002. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 15, 2002. This Court's Rule 29.2 is suspended in this case. Reported below: 257 F. 3d 738.

JANUARY 14, 2002

Miscellaneous Orders

No. 128, Orig. ALASKA *v.* UNITED STATES. Report of the Special Master on motion of Franklin H. James et al. for leave to

intervene received and ordered filed. Motion of Franklin H. James et al. for leave to intervene denied. [For earlier order herein, see, *e. g.*, *ante*, p. 1017.]

No. 01–7258. IN RE MILLHOUSE. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 99–1403. CEMENT MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA ET AL. *v.* STONE. C. A. 9th Cir. Certiorari denied. Reported below: 197 F. 3d 1003.

No. 00–10249. SPOTZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 563 Pa. 269, 759 A. 2d 1280.

No. 00–10431. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 438.

No. 00–10684. IRONS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 516.

No. 01–443. BANK OF AMERICA, N. A. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 1309.

No. 01–456. HOLLAND AMERICA LINE-WESTOURS, INC. *v.* NATIONAL PARKS AND CONSERVATION ASSN. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 241 F. 3d 722.

No. 01–681. DEL COMMERCIAL PROPERTIES, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 251 F. 3d 210.

No. 01–688. DAIMLERCHRYSLER CORP. *v.* GIBSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 261 F. 3d 927.

No. 01–696. KEARNEY ET AL. *v.* DOES 1–13 ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 261 F. 3d 1037.

No. 01–778. THACKER *v.* ST. LOUIS SOUTHWESTERN RAILWAY CO., DBA SOUTHERN PACIFIC TRANSPORTATION CO. C. A. 8th Cir. Certiorari denied. Reported below: 257 F. 3d 922.

No. 01–5219. HAPPEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–5358. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 244 F. 3d 828.

No. 01–5625. QURESHI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 6 Fed. Appx. 340.

No. 01–5663. COLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 259 F. 3d 717.

No. 01–6025. AZAGRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 01–6038. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 441.

No. 01–6174. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 441.

No. 01–6437. SUTHERLAND *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1117, 743 N. E. 2d 1007.

No. 01–6441. PARKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 790 So. 2d 1033.

No. 01–6757. ESPINOZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 256 F. 3d 718.

No. 01–6811. STERLING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–6817. BARTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 257 F. 3d 433.

No. 01–6825. AYALA-GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 255 F. 3d 1314.

No. 01–6829. STEPHENSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 742 N. E. 2d 463.

No. 01–7043. WILSON *v.* MAYNARD, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Ct. Common Pleas of Greenwood County, S. C. Certiorari denied.

No. 01–7046. THOMAS *v.* KAPTURE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 461.

No. 01–7052. MCDERMOTT *v.* INTERNAL REVENUE SERVICE ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–7054. ABDELMESSIH *v.* ZAKLAMA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 254 F. 3d 1077.

No. 01–7082. DASSENT *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7113. WALLS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 253.

No. 01–7120. AGENT *v.* UNITED STATES;
No. 01–7139. ALEXANDER *v.* UNITED STATES; and
No. 01–7356. PETE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1144.

No. 01–7135. BURTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–7173. FRITTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 5 Fed. Appx. 765.

No. 01–7175. SOTELO-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7201. FUENTES-ZUNIGA *v.* UNITED STATES; ROMAN-CARILLO *v.* UNITED STATES; and RIVERA-PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 705 (first judgment); 19 Fed. Appx. 615 (second judgment); 19 Fed. Appx. 530 (third judgment).

No. 01–7208. RAMIRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7252. KOBI *v.* LEONARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–7260. BARRAZA-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7262. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 257 F. 3d 1173.

No. 01–7263. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 652.

No. 01–7264. MARBLY *v.* O'NEILL, SECRETARY OF THE TREASURY. C. A. 6th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 437.

No. 01–7265. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7268. DAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 260 F. 3d 965.

No. 01–7269. ALBERTO CIRIZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7270. CINTRON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–7271. ALCORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 426 and 27 Fed. Appx. 317.

No. 01–7273. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 5 Fed. Appx. 87.

No. 01–7274. MIN SHUN HU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 620.

No. 01–7275. RODRIGUEZ-GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–7278. GOMEZ-SIMON, AKA MANTEROLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7279. HAMP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7280. GODMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 484.

No. 01–7281. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 398.

No. 01–7282. GILMORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 256.

No. 01–7283. GATEWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 230 F. 3d 186.

No. 01–7290. MARIN, AKA VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 815.

No. 01–7294. HASSETTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1098.

No. 01–7297. HORNING *v.* BOGAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–7303. CABALLERO-PEREZ *v.* UNITED STATES (Reported below: 19 Fed. Appx. 587); ALVAREZ-ALCALA *v.* UNITED STATES; GALLEGOS SOLIS *v.* UNITED STATES; GUTIERREZ-MENDINA *v.* UNITED STATES; GUTIERREZ-PULIDO *v.* UNITED STATES; GUZMAN-MADRIGAL *v.* UNITED STATES; HERNANDEZ-CARMONA *v.* UNITED STATES; MANJARREZ-CERVANTES *v.* UNITED STATES; MIRAMONTES-VILLEGAS *v.* UNITED STATES; RAMOS-LOPEZ *v.* UNITED STATES; RUIZ-GOMEZ *v.* UNITED STATES; SANCHEZ-MENDOZA *v.* UNITED STATES; SANDOVAL RIVAS *v.* UNITED STATES; SIGUENZA-SIGUENZA *v.* UNITED STATES; and TORRES-AVILA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7312. RICHARDSON *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–7317. PADILLA-VENEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7323. LEGARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7348. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1113.

No. 01–7367. ARNOLD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7387. WELCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–620. BUILDING INDUSTRY ASSOCIATION OF SUPERIOR CALIFORNIA ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Motion of Nebraska et al. for leave to

file a brief as *amici curiae* granted. Certiorari denied. Reported below: 247 F. 3d 1241.

No. 01–660. ELI LILLY & CO. *v.* BARR LABORATORIES, INC., ET AL. C. A. Fed. Cir. Motions of Biotechnology Industry Organization et al. and Intellectual Property Owners Association for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions and this petition. Reported below: 251 F. 3d 955.

No. 01–678. MOTION PICTURE INDUSTRY PENSION AND HEALTH PLANS *v.* N. T. AUDIO VISUAL SUPPLY, INC. C. A. 9th Cir. Motion of Directors Guild of America-Producer Pension Plans et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 259 F. 3d 1063.

No. 01–685. RUPP *v.* PHILLIPS. C. A. 10th Cir. Motion of Federal Law Enforcement Officers Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 15 Fed. Appx. 694.

No. 01–690. BAGLEY, WARDEN *v.* BYRD. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 269 F. 3d 585.

No. 01–7040. HUGHES *v.* GARCIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 14 Fed. Appx. 800.

Rehearing Denied

No. 01–6191. WILLIAMS *v.* UNITED INSURANCE COMPANY OF AMERICA ET AL., *ante*, p. 1025; and

No. 01–6498. MORIN *v.* TRUSTEES, SOUTHERN CONNECTICUT STATE UNIVERSITY, ET AL., *ante*, p. 1029. Petitions for rehearing denied.

JANUARY 16, 2002

Dismissal Under Rule 46

No. 00–1617. LITTON SYSTEMS, INC. *v.* HONEYWELL, INC. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 238 F. 3d 1376.

JANUARY 22, 2002

Affirmed on Appeal

No. 01–721. ROBERTSON ET AL. *v.* BARTELS ET AL. Affirmed on appeal from D. C. N. J. Reported below: 148 F. Supp. 2d 443.

Certiorari Granted—Vacated and Remanded

No. 00–1503. CITY OF GAINESVILLE *v.* CANNABIS ACTION NETWORK, INC., ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Thomas* v. *Chicago Park Dist.*, *ante*, p. 316. Reported below: 231 F. 3d 761.

Miscellaneous Orders

No. 01M32. DELK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 00–1214. ALABAMA *v.* SHELTON. Sup. Ct. Ala. [Certiorari granted, 532 U. S. 1018.] Motion of National Association of Criminal Defense Lawyers for leave to participate in oral argument as *amicus curiae* and for divided argument granted to be divided as follows: 20 minutes for respondent and 10 minutes for *amicus curiae*. Motion of petitioner for additional time for oral argument denied. Order of October 1, 2001 [*ante*, p. 808], granting the motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument rescinded.

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928 and *ante*, p. 1072.] Motion of TCG Maryland, Inc., to treat brief of AT&T Communications of Illinois, Inc., et al., in *Mathias et al.* v. *WorldCom Technologies, Inc., et al.*, No. 00–878 [certiorari granted, 532 U. S. 903], as brief of respondent TCG Maryland, Inc., in these cases granted. Motion of Illinois Bell Telephone Co., dba Ameritech Illinois, to consider brief filed in *Mathias et al.* v. *WorldCom Technologies, Inc., et al.*, No. 00–878, as a brief as *amicus curiae* in these cases granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 00–1737. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., ET AL. *v.* VILLAGE OF STRATTON ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 971.] Motions of Electronic Privacy Information Center et al. and Church of Jesus Christ of Latter-day Saints for leave to file briefs as *amici curiae* granted.

No. 00–1751. ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, ET AL. *v.* SIMMONS-HARRIS ET AL.;

No. 00–1777. HANNA PERKINS SCHOOL ET AL. *v.* SIMMONS-HARRIS ET AL.; and

No. 00–1779. TAYLOR ET AL. *v.* SIMMONS-HARRIS ET AL. C. A. 6th Cir. [Certiorari granted, 533 U. S. 976.] Motion of petitioners Hanna Perkins School et al. for additional time for oral argument and for divided argument granted, and 10 additional minutes allotted for that purpose. Motion of respondents for additional time for oral argument and for divided argument granted, and 10 additional minutes allotted for that purpose.

No. 00–1770. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *v.* RUCKER ET AL. C. A. 9th Cir. [Certiorari granted, 533 U. S. 976]; and

No. 00–1781. OAKLAND HOUSING AUTHORITY ET AL. *v.* RUCKER ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 813.] Motion of the Solicitor General for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 01–46. FEDERAL MARITIME COMMISSION *v.* SOUTH CAROLINA STATE PORTS AUTHORITY ET AL. C. A. 4th Cir. [Certiorari granted, *ante*, p. 971.] Motion of the Solicitor General for divided argument granted, and the time for oral argument is divided as follows: 20 minutes for the Federal Maritime Commission and 10 minutes for the Solicitor General.

No. 01–400. BELL, WARDEN *v.* CONE. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1064.] Motion for appointment of counsel granted, and it is ordered that Robert L. Hutton, Esq., of Memphis, Tenn., be appointed to serve as counsel for respondent in this case.

No. 01–7149. EMMANUEL ET UX. *v.* UNITED STATES ET AL. C. A. 1st Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 12, 2002,

within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 01–890. IN RE BALL. Petition for writ of habeas corpus denied.

No. 01–712. IN RE MAYS ET AL. Petition for writ of mandamus denied.

No. 01–793. IN RE SIMMONS. Petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Postponed

No. 01–714. UTAH ET AL. *v.* EVANS, SECRETARY OF COMMERCE, ET AL. Appeal from D. C. Utah. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Reported below: 182 F. Supp. 2d 1165.

Certiorari Granted

No. 01–704. UNITED STATES ET AL. *v.* BEAN. C. A. 5th Cir. Certiorari granted. Reported below: 253 F. 3d 234.

No. 01–706. SPRIETSMA, ADMINISTRATOR OF THE ESTATE OF SPRIETSMA, DECEASED *v.* MERCURY MARINE, A DIVISION OF BRUNSWICK CORP. Sup. Ct. Ill. Certiorari granted. Reported below: 197 Ill. 2d 112, 757 N. E. 2d 75.

No. 01–270. YELLOW TRANSPORTATION, INC. *v.* MICHIGAN ET AL. Sup. Ct. Mich. Certiorari granted limited to the following question: "Whether the Michigan Supreme Court erred in holding that, under 49 U. S. C. § 11506(c)(2)(B)(iv)(III) (1994 ed.) and 49 U. S. C. § 14504(c)(2)(B)(iv)(III) (1994 ed., Supp. V), only a State's 'generic' fee is relevant to determining the fee that was 'collected or charged as of November 15, 1991.'" Reported below: 464 Mich. 21, 627 N. W. 2d 236.

No. 01–705. BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* PEABODY COAL CO. ET AL.; BARNHART, COMMISSIONER OF SOCIAL SECURITY *v.* BELLAIRE CORP. ET AL.; and

No. 01–715. HOLLAND ET AL. *v.* BELLAIRE CORP. ET AL. C. A. 6th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: No. 01–705 (first judgment), 14 Fed. Appx. 393; No. 01–705 (second judgment) and No. 01–715, 14 Fed. Appx. 424.

Certiorari Denied

No. 00–1417. BECK ET AL. *v.* UNITED STATES; and
No. 00–8512. SEDLACKO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 234 F. 3d 827.

No. 00–1815. STEAKHOUSE, INC., ET AL. *v.* CITY OF RALEIGH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 4 Fed. Appx. 124.

No. 00–1839. MACDONALD ET AL. *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 243 F. 3d 1021.

No. 00–9621. PEREZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 00–10787. GUERRERO-BARAJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 240 F. 3d 428.

No. 01–64. HERSON, DBA BYNX ET AL. *v.* OREGON DRIVER AND MOTOR VEHICLE SERVICES BRANCH. Ct. App. Ore. Certiorari denied. Reported below: 157 Ore. App. 683, 971 P. 2d 492.

No. 01–475. JAMES ET AL. *v.* CITY OF DALLAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 551.

No. 01–592. CALIFORNIA FEDERAL BANK, FSB *v.* UNITED STATES; and
No. 01–698. UNITED STATES *v.* CALIFORNIA FEDERAL BANK, FSB. C. A. Fed. Cir. Certiorari denied. Reported below: 245 F. 3d 1342.

No. 01–619. BRAGG ET AL. *v.* WEST VIRGINIA COAL ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 248 F. 3d 275.

No. 01–639. MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL ET AL. *v.* MD/DC/DE BROADCASTERS ASSN. ET AL.; and
No. 01–662. OFFICE OF COMMUNICATION, INC., UNITED CHURCH OF CHRIST *v.* MD/DC/DE BROADCASTERS ASSN. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 236 F. 3d 13.

No. 01–664. AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL–CIO, ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 258 F. 3d 1294.

No. 01–674. YANCO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 258 F. 3d 1356.

No. 01–694. STERLING CONSULTING CORP. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 245 F. 3d 1161.

No. 01–701. TACO BELL CORP. *v.* WRENCH LLC ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 256 F. 3d 446.

No. 01–707. HANSARD *v.* REDDING RANCHERIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 88 Cal. App. 4th 384, 105 Cal. Rptr. 2d 773.

No. 01–709. ITNX *v.* ALPHA BUSINESS GROUP, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 780.

No. 01–710. LOGITECH, INC. *v.* GART. C. A. Fed. Cir. Certiorari denied. Reported below: 254 F. 3d 1334.

No. 01–713. SECTION 28 PARTNERSHIP, LTD. *v.* MARTIN COUNTY, FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 772 So. 2d 616.

No. 01–719. CAMPBELL ET AL. *v.* SEARS, ROEBUCK & CO. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 01–730. PAPA *v.* FAWCETT ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 767 A. 2d 32.

No. 01–736. WATKINS *v.* ROADWAY EXPRESS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–737. TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO. *v.* SECURITY LIFE INSURANCE COMPANY OF AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 926.

No. 01–746. RATNER ET AL. *v.* LOUDOUN COUNTY PUBLIC SCHOOLS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 140.

No. 01–747. SANGHVI *v.* ST. CATHERINE'S HOSPITAL, INC. C. A. 7th Cir. Certiorari denied. Reported below: 258 F. 3d 570.

No. 01–750. PROFESSIONAL TRAVEL CORP. *v.* BLAKE. Ct. App. D. C. Certiorari denied. Reported below: 768 A. 2d 568.

No. 01–753. BRADBURY *v.* IDAHO JUDICIAL COUNCIL. Sup. Ct. Idaho. Certiorari denied. Reported below: 136 Idaho 63, 28 P. 3d 1006.

No. 01–756. REGAL FISH LTD. *v.* FISH. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 970.

No. 01–761. MARTIN *v.* QUACKENBUSH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 562.

No. 01–767. MITRANO *v.* KELLY. Sup. Ct. Vt. Certiorari denied. Reported below: 172 Vt. 643, 785 A. 2d 191.

No. 01–775. UMPHREY ET AL. *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 259 F. 3d 387.

No. 01–784. UNITED STATES EX REL. NORBECK *v.* BASIN ELECTRIC POWER COOPERATIVE. C. A. 8th Cir. Certiorari denied. Reported below: 248 F. 3d 781.

No. 01–796. HELSETH *v.* BURCH. C. A. 8th Cir. Certiorari denied. Reported below: 258 F. 3d 867.

No. 01–899. GALLO *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 418.

No. 01–5127. HOOD *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 317 Ill. App. 3d 1172, 783 N. E. 2d 245.

No. 01–5769. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1362.

No. 01–5821. ROBLES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–6194. TAYLOR *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 464 Mich. 184, 627 N. W. 2d 297.

No. 01–6553. ENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 662.

No. 01–6914. BANE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 57 S. W. 3d 411.

No. 01–6918. HARTJE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 251 F. 3d 771.

No. 01–6928. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1066.

No. 01–6937. JACQUINOT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 258 F. 3d 423.

No. 01–6974. OLIVER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 464 Mich. 184, 627 N. W. 2d 297.

No. 01–7044. MURPHY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 91 Ohio St. 3d 516, 747 N. E. 2d 765.

No. 01–7058. HUNT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 01–7059. THOMPSON *v.* NEWLAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 533.

No. 01–7063. SCOTT *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 762 So. 2d 662.

No. 01–7065. SMOOT *v.* TAVENNER. C. A. 4th Cir. Certiorari denied. Reported below: 257 F. 3d 401.

No. 01–7066. HOLLOWELL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–7069. MCKINNEY *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–7070. BUREK *v.* VALLEY CAMP COAL CO. C. A. 4th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 152.

No. 01–7136. WHITEHEAD *v.* COWAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 263 F. 3d 708.

No. 01–7193. MONIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 506.

No. 01–7299. RICHMOND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 239.

No. 01–7316. BELTRAN DE MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7318. PELLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 609.

No. 01–7330. CRAIG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 260.

No. 01–7333. CONTRERAS AREVALO *v.* UNITED STATES; FRAUSTO-PEREZ *v.* UNITED STATES; GARCIA-GOMEZ *v.* UNITED STATES; HERNANDEZ-ESPINOZA *v.* UNITED STATES; and VASQUEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102 (fifth judgment) and 1103 (first through fourth judgments).

No. 01–7337. COTTOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 240.

No. 01–7340. HERRERA-GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 263 F. 3d 1092.

No. 01–7342. GRAYSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 166.

No. 01–7343. GIBSON, AKA WILLIS, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 85.

No. 01–7345. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 244.

No. 01–7354. POMPEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 264 F. 3d 1176.

No. 01–7357. FINK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 248 F. 3d 1182.

No. 01–7360. CANTU-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–684. UNITED STATES COURT OF INTERNATIONAL TRADE *v.* UNITED STATES ET AL. C. A. Fed. Cir. Motion of Save Domestic Oil, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 20 Fed. Appx. 847.

No. 01–691. STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* LAMBRIGHT. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 241 F. 3d 1201.

No. 01–769. DONNELLY, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY *v.* RAHEEM. C. A. 2d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 257 F. 3d 122.

No. 01–695. IRWIN MORTGAGE CORP. *v.* CULPEPPER ET AL. C. A. 11th Cir. Motion of Mortgage Bankers Association of America et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 253 F. 3d 1324.

No. 01–699. HARRIS *v.* COCA-COLA BOTTLING COMPANY CONSOLIDATED. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 Fed. Appx. 237.

No. 01–745. SULLIVAN *v.* RAYTHEON CO. ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 262 F. 3d 41.

Rehearing Denied

No. 00–1931. CORDERO *v.* MINETA, SECRETARY OF TRANSPORTATION, *ante*, p. 827;

No. 00–10622. LAW *v.* UNITED STATES, *ante*, p. 1018;

No. 01–5408. MINIX ET AL. *v.* TRI CITIES HEALTH SERVICES CORP., DBA COLUMBIA RIVER PARK HOSPITAL, FKA HCA RIVER PARK HOSPITAL, ET AL., *ante*, p. 921; and

No. 01–5817. WILLIAMS *v.* UNITED INSURANCE COMPANY OF AMERICA ET AL., *ante*, p. 1023. Petitions for rehearing denied.

No. 01–191. IANNACCONE *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 894. Motion of petitioner for production of records denied. Petition for rehearing denied.

JANUARY 23, 2002

Miscellaneous Order

No. 01A529 (01–7804). KING *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to

JUSTICE KENNEDY, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

JANUARY 24, 2002

Miscellaneous Orders

No. 01A549. SPIVEY *v.* GEORGIA STATE BOARD OF PARDONS AND PAROLES ET AL. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

No. 01–714. UTAH ET AL. *v.* EVANS, SECRETARY OF COMMERCE, ET AL. D. C. Utah. [Probable jurisdiction postponed, *ante*, p. 1112.] Motion of appellants to set an expedited schedule for briefing and oral argument in this case granted. Appellants' brief is to be filed with the Clerk and served upon appellees on or before 3 p.m., Wednesday, February 13, 2002. Appellees' briefs are to be filed with the Clerk and served upon appellants on or before 3 p.m., Monday, March 11, 2002. A reply brief, if any, is to be filed with the Clerk and served upon appellees on or before 3 p.m., Wednesday, March 20, 2002. Case is set for oral argument on Wednesday, March 27, 2002, at 10 a.m. This Court's Rule 29.2 is suspended in this case.

Certiorari Denied

No. 01–7916 (01A547). SPIVEY *v.* HEAD, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. JUSTICE BREYER would grant the petition for writ of certiorari.

JANUARY 28, 2002

Certiorari Denied

No. 01–7948 (01A552). ANDERSON *v.* DAVIS, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 279 F. 3d 674.

JANUARY 29, 2002

Dismissal Under Rule 46

No. 00–1926. AMERICAN INSURANCE ASSN. ET AL. *v.* LOW, COMMISSIONER OF INSURANCE OF CALIFORNIA. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 240 F. 3d 739.

Miscellaneous Order

No. 01–309. HOPE *v.* PELZER ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1073.] Order granting petition for writ of certiorari amended as follows: Certiorari granted limited to the following questions: "1. Whether state officials sued in their individual capacities under 42 U. S. C. § 1983 are entitled to qualified immunity unless they have violated statutory or constitutional rights 'clearly established' by a case presenting facts 'materially similar' to those in the plaintiff's case. 2. Whether under the circumstances that must be taken as true at the summary judgment stage of this case, tying a prisoner to a 'hitching post' violates 'clearly established' constitutional rights for purposes of qualified immunity under 42 U. S. C. § 1983."

Certiorari Denied

No. 01–7987 (01A561). ANDERSON *v.* DAVIS, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition.

JANUARY 30, 2002

Certiorari Denied

No. 01–7930 (01A559). BROUSSARD *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 254 F. 3d 71.

FEBRUARY 5, 2002

Miscellaneous Order

No. 01A576 (01–8099). BOTTOSON *v.* FLORIDA ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court. JUSTICE O'CONNOR took no part in the consideration or decision of this case.

Certiorari Denied

No. 01–8148 (01A587). OWSLEY *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 281 F. 3d 687.

FEBRUARY 8, 2002

Miscellaneous Order

No. 01A598 (01–8240). MARTIN *v.* CAIN, WARDEN. Sup. Ct. La. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court.

FEBRUARY 14, 2002

Miscellaneous Order

No. 01–8268 (01A603). IN RE BYRD. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

FEBRUARY 15, 2002

Dismissal Under Rule 46

No. 01–654. CELLCO PARTNERSHIP, DBA VERIZON WIRELESS *v.* NEXTWAVE PERSONAL COMMUNICATIONS INC. ET AL. C. A.

D. C. Cir. Certiorari dismissed under this Court's Rule 46.2. Reported below: 254 F. 3d 130.

Miscellaneous Orders

No. 01A557. WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES ET AL. *v.* GUARDIANSHIP ESTATE OF KEFFELER ET AL. The Solicitor General is invited to file a brief in this case expressing the views of the United States on or before 3 p.m., Friday, March 1, 2002.

No. 00–1406. CHEVRON U. S. A. INC. *v.* ECHAZABAL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 991.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 00–1737. WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., ET AL. *v.* VILLAGE OF STRATTON ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 971.] Motion of Ohio et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

No. 00–8452. ATKINS *v.* VIRGINIA. Sup. Ct. Va. [Certiorari granted, 533 U. S. 976.] Motion for appointment of counsel granted, and it is ordered that Robert E. Lee, of Charlottesville, Va., be appointed to serve as counsel for petitioner in this case.

No. 01–298. LAPIDES *v.* BOARD OF REGENTS OF UNIVERSITY SYSTEM OF GEORGIA ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 991.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted.

Certiorari Granted

No. 01–7662. MILLER-EL *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 261 F. 3d 445.

FEBRUARY 19, 2002

Certiorari Dismissed

No. 01–7247. KOWALSKI *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir.

Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) *(per curiam)*. JUSTICE STEVENS dissents. See *id.*, at 4, and cases cited therein.

No. 01–7388. THOMAS *v.* RAY, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. (two judgments). C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 01A478. HAMPTON *v.* LEIBACH. Motion of respondent to stay order issued by JUSTICE STEVENS on January 16, 2002, denied.

No. 01A530. URBAN *v.* HURLEY ET AL. Application for injunction, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. D–2254. IN RE STIDHAM. Chuck R. Stidham, of Cincinnati, Ohio, having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on September 7, 2001 [533 U. S. 972], is discharged.

No. D–2255. IN RE DISBARMENT OF EVANS. Disbarment entered. [For earlier order herein, see 533 U. S. 972.]

No. D–2256. IN RE DISBARMENT OF GRIFFITHS. Disbarment entered. [For earlier order herein, see 533 U. S. 972.]

No. D–2257. IN RE DISBARMENT OF HANNA. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–2258. IN RE ARON. Ruthann Aron, of Potomac, Md., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 1, 2001 [*ante*, p. 804], is discharged.

No. D–2260. IN RE DISBARMENT OF MERCER. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2261. IN RE DISBARMENT OF MCPHEE. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2263. IN RE DISBARMENT OF LALLO. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2264. IN RE DISBARMENT OF GOLDSTEIN. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2265. IN RE DISBARMENT OF DON. Disbarment entered. [For earlier order herein, see *ante*, p. 805.]

No. D–2267. IN RE DISBARMENT OF CLARKE. Disbarment entered. [For earlier order herein, see *ante*, p. 806.]

No. D–2271. IN RE DISBARMENT OF NOBLE. Disbarment entered. [For earlier order herein, see *ante*, p. 806.]

No. D–2273. IN RE DISBARMENT OF GRAND. Disbarment entered. [For earlier order herein, see *ante*, p. 806.]

No. D–2274. IN RE DISBARMENT OF LEGG. Disbarment entered. [For earlier order herein, see *ante*, p. 807.]

No. 01M33. GORE *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 01M34. ROGERS *v.* VICUNA ET AL.;

No. 01M35. CULLERTON *v.* RYDER, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX;

No. 01M36. HUMPHREY *v.* DEPARTMENT OF JUSTICE ET AL.;

No. 01M37. CURRY *v.* SPARKMAN, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL.; and

No. 01M39. EGHERMAN *v.* ROE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 00–1531. VERIZON MARYLAND INC. *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL.; and

No. 00–1711. UNITED STATES *v.* PUBLIC SERVICE COMMISSION OF MARYLAND ET AL. C. A. 4th Cir. [Certiorari granted, 533 U. S. 928 and *ante*, p. 1072.] Motion of New Jersey et al. for leave

to consider *amici curiae* brief filed in *Mathias et al.* v. *WorldCom Technologies, Inc., et al.*, No. 00–878 [certiorari granted, 532 U. S. 903], as *amici curiae* brief in these cases granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 00–9763. PETERSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 801] denied.

No. 00–5598. GRIFFIN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 948] denied.

No. 01–6295. MULAZIM *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 989] denied.

No. 01–6523. NUBINE *v.* STRINGFELLOW. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1016] denied.

No. 01–6613. MCSHEFFREY *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1016] denied.

No. 01–6689. IN RE NORTHINGTON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 991] denied.

No. 01–6690. IN RE YOUNG. Sup. Ct. Ky. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1053] denied.

No. 01–131. GISBRECHT ET AL. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1039.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 01–332. BOARD OF EDUCATION OF INDEPENDENT SCHOOL DISTRICT NO. 92 OF POTTAWATOMIE COUNTY ET AL. *v.* EARLS

ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1015.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 01–595. UNITED STATES *v.* RUIZ. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1074.] Motion for appointment of counsel granted, and it is ordered that Steven F. Hubachek, Esq., of San Diego, Cal., be appointed to serve as counsel for respondent in this case.

No. 01–863. FIN CONTROL SYSTEMS PTY, LTD. *v.* SURFCO HAWAII. C. A. Fed. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 01–7490. IN RE RAMON;
No. 01–7502. IN RE VERTIN;
No. 01–7556. IN RE SMITH; and
No. 01–7923. IN RE ERDHEIM. Petitions for writs of habeas corpus denied.

No. 01–7900. IN RE GREEN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 01–771. IN RE MCBETH-LARRY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 01–618. ELDRED ET AL. *v.* ASHCROFT, ATTORNEY GENERAL. C. A. D. C. Cir. Certiorari granted.* Reported below: 239 F. 3d 372.

No. 01–729. OTTE ET AL. *v.* DOE ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 259 F. 3d 979.

No. 01–757. SYNGENTA CROP PROTECTION, INC., ET AL. *v.* HENSON. C. A. 11th Cir. Certiorari granted. Reported below: 261 F. 3d 1065.

No. 01–896. FORD MOTOR CO. ET AL. *v.* MCCAULEY ET AL. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 264 F. 3d 952.

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*[REPORTER'S NOTE: For amendment of this order, see, *post*, p. 1160.]

Certiorari Denied

No. 00–1491. JOHN DEERE INSURANCE CO. *v.* NUEVA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 229 F. 3d 853.

No. 00–1842. STATOIL ASA *v.* HEEREMAC V. O. F. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 241 F. 3d 420.

No. 01–652. CUSTER COUNTY ACTION ASSN. ET AL. *v.* GARVEY, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 256 F. 3d 1024.

No. 01–673. NEVADA *v.* FINGER. Sup. Ct. Nev. Certiorari denied. Reported below: 117 Nev. 548, 27 P. 3d 66.

No. 01–680. HALLMARK CARDS, INC. *v.* GROUP ONE, LTD. C. A. Fed. Cir. Certiorari denied. Reported below: 254 F. 3d 1041.

No. 01–716. FELTNER *v.* COLUMBIA PICTURES TELEVISION, INC. C. A. 9th Cir. Certiorari denied. Reported below: 259 F. 3d 1186.

No. 01–717. RIVERDALE MILLS CORP. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 256 F. 3d 20.

No. 01–718. BARALT ET AL. *v.* NATIONWIDE MUTUAL INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 251 F. 3d 10.

No. 01–723. PENOBSCOT NATION ET AL. *v.* GEORGIA-PACIFIC CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 254 F. 3d 317.

No. 01–726. HIPP ET AL. *v.* LIBERTY NATIONAL LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1208.

No. 01–728. MOUNTAIN WEST HELICOPTERS, LLC *v.* TEXTRON, INC. C. A. 10th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 855.

No. 01–731. GOLDBERG, EXECUTIVE DIRECTOR, CALIFORNIA FRANCHISE TAX BOARD *v.* ELLETT; and SORENSON, EXECUTIVE DIRECTOR, CALIFORNIA STATE BOARD OF EQUALIZATION *v.* AR-

TIGLIO. C. A. 9th Cir. Certiorari denied. Reported below: 254 F. 3d 1135 (first judgment); 13 Fed. Appx. 653 (second judgment).

No. 01–733. KORTEBEIN ET AL. *v.* AMERICAN MUTUAL LIFE INSURANCE CO., NKA AMERUS LIFE INSURANCE CO. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 49 S. W. 3d 79.

No. 01–735. WILKINSON ET AL. *v.* DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 54 S. W. 3d 1.

No. 01–738. MOSEMAN ET AL. *v.* VAN LEER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 263 F. 3d 129.

No. 01–739. MORGAN CAPITAL, L. L. C. *v.* MEDTOX SCIENTIFIC, INC. C. A. 8th Cir. Certiorari denied. Reported below: 258 F. 3d 763.

No. 01–741. ALLDATA CORP. ET AL. *v.* MILLER. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 457.

No. 01–743. CROCKETT *v.* SHIELDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 604.

No. 01–748. BOLTE *v.* KOSCOVE. Ct. App. Colo. Certiorari denied. Reported below: 30 P. 3d 784.

No. 01–749. SHINPEI OKAJIMA *v.* BOURDEAU. C. A. Fed. Cir. Certiorari denied. Reported below: 261 F. 3d 1350.

No. 01–751. BROWN *v.* SNYDER, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 01–754. NEW YORK STATE NATIONAL ORGANIZATION FOR WOMEN ET AL. *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 261 F. 3d 156.

No. 01–755. MCLIN *v.* BOARD OF POLICE COMMISSIONERS OF THE METROPOLITAN ST. LOUIS POLICE DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 388.

No. 01–759. FRIENDS OF GATEWAY ET AL. *v.* MINETA, SECRETARY OF TRANSPORTATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 257 F. 3d 74.

No. 01–765. COLE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–768. BURLINGTON AIR EXPRESS, INC. *v.* LITE-ON PERIPHERALS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 255 F. 3d 1189.

No. 01–772. PAPPAS *v.* UNUM LIFE INSURANCE COMPANY OF AMERICA. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 492.

No. 01–774. CITY OF LITTLE ROCK *v.* YOUNG. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 730.

No. 01–776. MIAMI NATION OF INDIANS OF INDIANA, INC., ET AL. *v.* NORTON, SECRETARY OF THE INTERIOR, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 255 F. 3d 342.

No. 01–777. AWARE WOMAN CENTER FOR CHOICE, INC., ET AL. *v.* ROE. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 678.

No. 01–779. THOMPSON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 01–780. WRIGLEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 248 Ga. App. 387, 546 S. E. 2d 794.

No. 01–783. TOWN OF EAST HAVEN ET AL. *v.* NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 259 F. 3d 113.

No. 01–789. NATIONAL TITLE RESOURCES CORP. *v.* FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK. C. A. 8th Cir. Certiorari denied. Reported below: 261 F. 3d 758.

No. 01–790. IOWA ET AL. *v.* ANTHONY ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 632 N. W. 2d 897.

No. 01–794. IDAHO STATE TAX COMMISSION *v.* GOODMAN OIL COMPANY OF LEWISTON ET AL. Sup. Ct. Idaho. Certiorari denied. Reported below: 136 Idaho 53, 28 P. 3d 996.

No. 01–795. GLAUSER *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 66 S. W. 3d 307.

No. 01–799. GREENE *v.* TENNESSEE DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied. Reported below: 265 F. 3d 369.

No. 01–809. MCKENZIE *v.* MUTUAL OF ENUMCLAW INSURANCE CO. Ct. App. Wash. Certiorari denied. Reported below: 104 Wash. App. 1049.

No. 01–810. MOLDO, CHAPTER 7 TRUSTEE, ESTATE OF CYBERNETIC SERVICES, INC., DBA SILENT RADIO, INC. *v.* MATSCO, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 252 F. 3d 1039.

No. 01–811. MCMAHON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 257 Conn. 544, 778 A. 2d 847.

No. 01–814. HUNTER *v.* WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT. Ct. App. Ore. Certiorari denied. Reported below: 173 Ore. App. 514, 22 P. 3d 1235.

No. 01–815. OVERBY ET VIR *v.* WITSO. Sup. Ct. Minn. Certiorari denied. Reported below: 627 N. W. 2d 63.

No. 01–818. ESTATE OF BISHOP, FKA BISHOP, DBA ESSENCE OF LIFE *v.* EQUINOX INTERNATIONAL CORP. C. A. 10th Cir. Certiorari denied. Reported below: 256 F. 3d 1050.

No. 01–819. ROWE ET AL. *v.* NORTH CAROLINA DEPARTMENT OF TRANSPORTATION. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 671, 549 S. E. 2d 203.

No. 01–822. KELLER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 143 Wash. 2d 267, 19 P. 3d 1030.

No. 01–825. TEAMSTERS LOCAL UNION NO. 293 *v.* TRUSERV CORP., FKA COTTER & CO., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 254 F. 3d 1105.

No. 01–829. HERTZBERG *v.* SRAM CORP. C. A. 7th Cir. Certiorari denied. Reported below: 261 F. 3d 651.

No. 01–832. BALANAY *v.* SUE-NOGUCHI. Sup. Ct. Haw. Certiorari denied. Reported below: 96 Haw. 72, 26 P. 3d 30.

No. 01–833. TSUI ET UX. *v.* TOLZ, AS TRUSTEE FOR SHERIDAN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1114.

No. 01–834. CITY OF LYNN *v.* THOMPSON. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 435 Mass. 54, 754 N. E. 2d 54.

No. 01–837. SLONIMSKY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–839. THOUSAND *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 465 Mich. 149, 631 N. W. 2d 694.

No. 01–841. CHENOWETH *v.* HILLSBOROUGH COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 250 F. 3d 1328.

No. 01–842. DILLARD DEPARTMENT STORES, INC. *v.* HAMPTON. C. A. 10th Cir. Certiorari denied. Reported below: 247 F. 3d 1091.

No. 01–843. CORDOBA ET AL. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 10th Cir. Certiorari denied. Reported below: 256 F. 3d 1044.

No. 01–848. YOUNG ET AL. *v.* TOLES; and ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* HANNON. C. A. 4th Cir. Certiorari denied.

No. 01–849. COWLES *v.* ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 23 P. 3d 1168.

No. 01–851. PALAC *v.* SMITH ET AL. Ct. App. Ohio, Trumbull County. Certiorari denied.

No. 01–852. FLORIDA ET AL. *v.* STATE CONTRACTING & ENGINEERING CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 258 F. 3d 1329.

No. 01–855. SCHAEFER *v.* STATE BAR OF NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 117 Nev. 496, 25 P. 3d 191.

No. 01–856. MANN *v.* BROWN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 399.

No. 01–859. CAPPS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 01–860. DETTLAFF *v.* HADDOCK ET AL. Ct. App. Ore. Certiorari denied. Reported below: 173 Ore. App. 170, 21 P. 3d 664.

No. 01–861. ASHIHUNDU *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 53.

No. 01–862. MIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 73.

No. 01–864. MARCELLA *v.* MURPHY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 13 Fed. Appx. 10.

No. 01–865. STORTI ET AL. *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1056.

No. 01–867. YELSA *v.* STATE BAR OF MONTANA. Sup. Ct. Montana. Certiorari denied. Reported below: 305 Mont. 279, 53 P. 3d 854.

No. 01–869. MCCAULEY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 391 Mass. 697, 464 N. E. 2d 50.

No. 01–870. NOBLE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 725.

No. 01–871. MCGHEE *v.* TISDALE ET UX. Sup. Ct. Ala. Certiorari denied. Reported below: 824 So. 2d 84.

No. 01–872. VIRDIN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 780 A. 2d 1024.

No. 01–876. DIAMOND JO CASINO *v.* RANNALS. C. A. 6th Cir. Certiorari denied. Reported below: 265 F. 3d 442.

No. 01–877. BALAWAJDER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 252 F. 3d 1357.

No. 01–879. PRIOR *v.* SPLASH DESIGN, INC. Ct. App. Wash. Certiorari denied. Reported below: 103 Wash. App. 1036.

No. 01–880. HUANG, INDIVIDUALLY, AND AS NEXT FRIEND OF HUANG ET AL., MINORS *v.* SCUDDER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–882. EPELBAUM *v.* CHICAGO BOARD OF EDUCATION. C. A. 7th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 384.

No. 01–883. BUSH ET UX. *v.* CITY OF ZEELAND. Ct. App. Mich. Certiorari denied.

No. 01–884. GHIDONI *v.* HILL COUNTY S. A. LTD. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–886. FINN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 747 N. E. 2d 80.

No. 01–888. CHOICE HOTELS INTERNATIONAL, INC. *v.* TICKNOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 265 F. 3d 931.

No. 01–891. REGAN *v.* NEW YORK STATE DEPARTMENT OF CIVIL SERVICE ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 284 App. Div. 2d 950, 725 N. Y. S. 2d 917.

No. 01–892. PRITIKIN *v.* DEPARTMENT OF ENERGY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 254 F. 3d 791.

No. 01–894. GUTMAN *v.* GUTMAN, AKA FRANCIS. Sup. Ct. Ore. Certiorari denied.

No. 01–895. FIORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 229 F. 3d 1139.

No. 01–897. GARDNER *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 01–898. HOLGUIN *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 01–901. KHAN *v.* ACCURATE MOLD, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1055.

No. 01–905. BOULDER FRUIT EXPRESS ET AL. *v.* TRANSPORTATION FACTORING, INC., DBA TRANSFAC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 251 F. 3d 1268.

No. 01–906. KNUBBE *v.* DETROIT BOARD OF EDUCATION. Ct. App. Mich. Certiorari denied.

No. 01–907. RUGIERO *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 257 F. 3d 534.

No. 01–910. NEWTON *v.* B. F. GOODRICH CO. ET AL. Ct. App. N. C. Certiorari denied. Reported below: 143 N. C. App. 568, 547 S. E. 2d 861.

No. 01–911. TANKHA *v.* WYETH-AYERST LABORATORIES, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 777 A. 2d 517.

No. 01–912. JENNINGS *v.* KELLOGG USA, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 442.

No. 01–913. JACOBS *v.* RICE COUNTY, MINNESOTA. Sup. Ct. Minn. Certiorari denied.

No. 01–919. LOE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 262 F. 3d 427.

No. 01–922. MCKEON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 51 S. W. 3d 212.

No. 01–923. MAARAWI *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 172 Vt. 642, 782 A. 2d 86.

No. 01–930. DINGES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 308.

No. 01–935. EISENSTEIN *v.* MCGREEVEY, GOVERNOR OF NEW JERSEY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 4 Fed. Appx. 24.

No. 01–946. SMEDVIG TANKSHIPS, LTD., ET AL. *v.* HINGLE, SHERIFF, PLAQUEMINES PARISH, LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 786 So. 2d 827.

No. 01–947. HENSON *v.* SYNGENTA CROP PROTECTION, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 261 F. 3d 1065.

No. 01–970. BIEGANOWSKI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–971. PIPER *v.* VENEMAN, SECRETARY OF AGRICULTURE. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 162.

No. 01–996. KIM *v.* WHITE, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 149.

No. 01–1011. MORALES ET AL. *v.* EVANS, SECRETARY OF COMMERCE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 45.

No. 01–1013. ALBERTO RODRIGUEZ *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 4 Fed. Appx. 104.

No. 01–1026. MCCOLE *v.* RAILROAD RETIREMENT BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 314.

No. 01–1027. CRAWFORD *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 266 F. 3d 1120.

No. 01–1031. ORISAKWE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–1032. BARTH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 25 Fed. Appx. 96.

No. 01–1034. BONILLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 6 Fed. Appx. 42.

No. 01–1055. ROSANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 245 F. 3d 212.

No. 01–1072. MOSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 749.

No. 01–6342. SENGUPTA *v.* UNIVERSITY OF ALASKA. Sup. Ct. Alaska. Certiorari denied. Reported below: 21 P. 3d 1240.

No. 01–6536. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–6615. BROWN *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–6749. PAYTON *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 256 F. 3d 405.

No. 01–6753. SMITH *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 256 F. 3d 1135.

No. 01–6780. LAMBERT *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 743 N. E. 2d 719.

No. 01–6939. HALL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 792 So. 2d 447.

No. 01–7009. ANDERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 543, 22 P. 3d 347.

No. 01–7076. HAGAN *v.* COGGINS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1142.

No. 01–7077. TAITT *v.* WHITECO INDUSTRIES. Sup. Ct. Fla. Certiorari denied. Reported below: 791 So. 2d 1102.

No. 01–7085. ADU-BENIAKO *v.* MAIMONIDES MEDICAL CENTER. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 43.

No. 01–7090. DAILY *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–7093. HUBBARD *v.* HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 262 F. 3d 1194.

No. 01–7094. ISREAL *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 496.

No. 01–7097. COLLINS *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 01–7098. GIBBS *v.* GRIMMETTE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 254 F. 3d 545.

No. 01–7099. MURPHY *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 417.

No. 01–7101. BROWN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–7103. OLIVER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1114.

No. 01–7104. NOBLE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–7105. PARK *v.* KUYKENDALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–7107. GOOLSBY *v.* ATLANTA INDEPENDENT SCHOOL SYSTEM. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1069.

No. 01–7114. WALKER *v.* CAREY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–7115. ANAYA VERDUGO *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 767.

No. 01–7116. BURR *v.* WALKER, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–7119. SOLOMON *v.* MCLEMORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 360.

No. 01–7127. BEARD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 01–7129. RUFF *v.* CLARKE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 543.

No. 01–7131. GREEN *v.* PLILER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–7133. DANIEL *v.* WORKERS' COMPENSATION APPEALS BOARD. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 01–7134. OMAR-MUHAMMAD *v.* WILLIAMS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 898.

No. 01–7142. MOORE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–7144. CRAWFORD *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 257 Conn. 769, 778 A. 2d 947.

No. 01–7146. KEMP *v.* TYSKIEWIC. C. A. 6th Cir. Certiorari denied.

No. 01–7147. MARANIAN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 310.

No. 01–7153. LEDFORD *v.* TURPIN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 01–7156. DRAHEIM *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 413.

No. 01–7160. DORENBOS *v.* MILLER-STOUT, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 01–7167. WILLIAMS *v.* NEWLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–7168. BENNETT *v.* STEWART. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 598.

No. 01–7169. COBIO CERVANTES *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–7170. HILLHOUSE *v.* WACKENHUT CORRECTIONS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1145.

No. 01–7171. HUDSON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 01–7176. SIERS *v.* WEBER, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 259 F. 3d 969.

No. 01–7177. ROBINSON *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 452.

No. 01–7181. CLAY *v.* WILKINSON COUNTY BOARD OF SUPERVISORS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 163.

No. 01–7183. CORPUS *v.* MUNICIPAL CORP. ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7184. WILCOX *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 720.

No. 01–7186. JACKSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 784 So. 2d 180.

No. 01–7189. LUTCHER *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 01–7192. JACOBS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7198. GUZMAN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 804 So. 2d 366.

No. 01–7204. BENNINGS *v.* CONNECTICUT DEPARTMENT OF CORRECTIONS ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–7205. HONGO *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1140.

No. 01–7206. HENTZ *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 01–7209. SEVIER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 254 F. 3d 1084.

No. 01–7211. ORBE *v.* TAYLOR, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 01–7215. DUARTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 46.

No. 01–7216. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 139.

No. 01–7217. CASTANEDA-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063.

No. 01–7218. MALCOM *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–7221. MARROQUIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102.

No. 01–7222. JIMENEZ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 256 F. 3d 330.

No. 01–7223. RAMOS *v.* UNITED STATES; HERNANDEZ MORALES *v.* UNITED STATES; and DURON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099 (first judgment) and 1100 (second and third judgments).

No. 01–7224. ROGERS *v.* JONES ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7225. REID *v.* PRICE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–7226. RAMIREZ-MENESES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7231. SEKO *v.* BOEING CO. C. A. 8th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 380.

No. 01–7233. BERHANU *v.* NEW YORK STATE INSURANCE FUND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 13 Fed. Appx. 30.

No. 01–7235. WYNER *v.* MANHATTAN BEACH UNIFIED SCHOOL DISTRICT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 223 F. 3d 1026.

No. 01–7236. GORDON *v.* KINGS COUNTY HOSPITAL CENTER ET AL. C. A. 2d Cir. Certiorari denied.

No. 01–7239. JOHNSON *v.* LAMBERT. C. A. 9th Cir. Certiorari denied.

No. 01–7241. WOMACK *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–7249. MILLER *v.* CHAMPION. C. A. 10th Cir. Certiorari denied. Reported below: 262 F. 3d 1066.

No. 01–7257. BARKER *v.* FUGAZZI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 663.

No. 01–7259. LIVA *v.* NORTHSIDE INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 164.

No. 01–7261. CUNNINGHAM *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 25 Cal. 4th 926, 25 P. 3d 519.

No. 01–7267. CHAVEZ *v.* HICKMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 760.

No. 01–7276. FOREST *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–7277. GILLIAM *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 703.

No. 01–7284. GRIGGS *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 263 F. 3d 355.

No. 01–7285. FRYE *v.* COMAIR, INC. C. A. 8th Cir. Certiorari denied. Reported below: 9 Fed. Appx. 565.

No. 01–7287. HEWLETT *v.* OFFICE OF THE DISTRICT ATTORNEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 275 F. 3d 35.

No. 01–7289. HOLLEY *v.* MITCHEM, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7291. WATERBURY *v.* ALAMEIDA, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 01–7300. PONDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 260 F. 3d 625.

No. 01–7302. CHACON-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 749.

No. 01–7306. STOUDEMIRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 119.

No. 01–7307. BENZANT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7308. TAYLOR *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 01–7309. TEEPLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 323.

No. 01–7311. ARMSTEAD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 246 Wis. 2d 668, 630 N. W. 2d 275.

No. 01–7313. ATCHLEY *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–7314. KIMBALL *v.* JOHNSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–7319. PEREZ-AGUIRRE, AKA PEREZ-MACEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 731.

No. 01–7320. SICARI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 434 Mass. 732, 752 N. E. 2d 684.

No. 01–7321. RAY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 809 So. 2d 875.

No. 01–7324. TURLEY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 127.

No. 01–7325. TURAY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 01–7326. OLIVER ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1113.

No. 01–7327. PETTREY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 209 W. Va. 449, 549 S. E. 2d 323.

No. 01–7328. MOREJON-PACHECO *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 179.

No. 01–7329. CAMPBELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 355.

No. 01–7331. BELLAMY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 264 F. 3d 448.

No. 01–7334. HUBBART *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 88 Cal. App. 4th 1202, 106 Cal. Rptr. 2d 490.

No. 01–7336. WIXOM *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 264 F. 3d 894.

No. 01–7339. CANNON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 264 F. 3d 875.

No. 01–7341. HENNESSEY *v.* VAUGHN, SUPERINTENDENT, STATE INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 491.

No. 01–7344. GONZALEZ-CHAVIRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7346. MELSON *v.* VAUGHN, SUPERINTENDENT, GRATERFORD CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 01–7347. WELLS *v.* MOHAMMED ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 791 So. 2d 476.

No. 01–7349. WRIGHT *v.* NEUMAN DISTRIBUTION CO. C. A. 5th Cir. Certiorari denied.

No. 01–7350. MCELROY *v.* MCELROY. Ct. App. D. C. Certiorari denied.

No. 01–7351. MOSSERI *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7352. ROLLS *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–7353. SUMLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 320.

No. 01–7355. BASHAM *v.* CRAWFORD ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–7358. HILL *v.* SPARKMAN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–7359. SPIVEY *v.* STERNES, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 514.

No. 01–7361. DESANTIS *v.* FARMER, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 261 F. 3d 491.

No. 01–7362. CLEMENTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1111.

No. 01–7363. CASSERLY *v.* COATES, JUDGE, SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 01–7364. CLAUDE ET UX. *v.* SMOLA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 263 F. 3d 858.

No. 01–7365. CLARK *v.* MOORE, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 01–7366. COPLEY *v.* STATE AUTOMOBILE MUTUAL PROPERTY & CASUALTY INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 75.

No. 01–7368. CAMPBELL *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 01–7370. TIBBETTS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 92 Ohio St. 3d 146, 749 N. E. 2d 226.

No. 01–7371. TINKER *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 255 F. 3d 1331.

No. 01–7372. FINLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 245 F. 3d 199.

No. 01–7373. HILLIARD *v.* MOODY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 01–7374. HURD *v.* MILLER, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 01–7375. HAROLD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7376. GREEN *v.* HODGES, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–7377. DEL TORO *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied.

No. 01–7380. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 775.

No. 01–7381. COATES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 262 F. 3d 233.

No. 01–7382. CHISHOLM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7383. ETHINGTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 01–7384. DAUMY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7385. BURDICK *v.* MAINE. Sup. Jud. Ct. Maine. Certiorari denied. Reported below: 782 A. 2d 319.

No. 01–7390. OSUJI *v.* DOCTOR'S ASSOCIATES, INC. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 1.

No. 01–7391. ROYBAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 920.

No. 01–7392. NGHIA LE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 256 F. 3d 1229.

No. 01–7393. HYLAND *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–7394. CURRO *v.* NEW YORK. Sup. Ct. N. Y., Kings County. Certiorari denied.

No. 01–7397. VINH HUU NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 689.

No. 01–7398. GLOVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 265 F. 3d 337.

No. 01–7400. FRAGA-ARAIGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099.

No. 01–7402. MCKINNEY *v.* LANCASTER STATE PRISON. C. A. 9th Cir. Certiorari denied.

No. 01–7403. POST *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 01–7404. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 263 F. 3d 805.

No. 01–7405. TAGUE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 434 Mass. 510, 751 N. E. 2d 388.

No. 01–7406. JESTINE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 17 Fed. Appx. 59.

No. 01–7407. BROOKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 297 Ill. App. 3d 581, 697 N. E. 2d 343.

No. 01–7409. LOZANO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 01–7410. KEYS *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 694.

No. 01–7412. WARNER *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 28 P. 3d 21.

No. 01–7413. ZAGORSKI *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 263 F. 3d 160.

No. 01–7414. ALONZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7415. SANTOS RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 265 F. 3d 310.

No. 01–7418. SALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7419. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1095.

No. 01–7422. PEGUERO-CARELA, AKA PEGUERO-RAMOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7424. LOTT *v.* BAGLEY. C. A. 6th Cir. Certiorari denied. Reported below: 261 F. 3d 594.

No. 01–7425. BALTAZAR-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099.

No. 01–7429. ORTEGA-DELGADO, AKA GARCIA, AKA DELGADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1067.

No. 01–7431. PALOMINO-RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 258 F. 3d 656.

No. 01–7433. KAYODE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 254 F. 3d 204.

No. 01–7434. KING *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 457, 546 S. E. 2d 575.

No. 01–7437. RIDLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 884.

No. 01–7438. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 522.

No. 01–7439. SALLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 91.

No. 01–7440. SANCHEZ-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 555.

No. 01–7441. LAWSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 266 F. 3d 462.

No. 01–7442. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 444.

No. 01–7443. SANCHEZ-RIVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7445. COLEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 744.

No. 01–7446. DUINA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1057.

No. 01–7447. ELDIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 51.

No. 01–7450. COLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 59.

No. 01–7451. SWAIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 26 Fed. Appx. 15.

No. 01–7452. SHIRLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1067.

No. 01–7453. SCHAFFNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 258 F. 3d 675.

No. 01–7459. THRASHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 966.

No. 01–7465. HERNANDEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1095.

No. 01–7466. GREATHOUSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1108.

No. 01–7467. GRASSI *v.* HOOD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 251 F. 3d 1218 and 260 F. 3d 1158.

No. 01–7472. SARFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 467.

No. 01–7475. ALLEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–7476. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 263 F. 3d 161.

No. 01–7478. MCNEAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 249 F. 3d 747.

No. 01–7480. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7482. VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 267 F. 3d 79.

No. 01–7488. CROZIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 259 F. 3d 503.

No. 01–7492. SURRATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7493. SARO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 252 F. 3d 449.

No. 01–7496. COOPER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–7497. DIXON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 469.

No. 01–7498. MARTINEZ-GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 268 F. 3d 460.

No. 01–7499. WALLS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 773 A. 2d 424.

No. 01–7501. BERMEA-CEPEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7503. WINTERS *v.* EDWARDS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 327.

No. 01–7504. CORKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 252 F. 3d 1359.

No. 01–7505. ENRIQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 43.

No. 01–7506. COLEMAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 217.

No. 01–7507. RIVERA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 12 Fed. Appx. 375.

No. 01–7513. GARRETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 632.

No. 01–7519. WILLIAMS *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied.

No. 01–7522. DIPIETRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 20 Fed. Appx. 24.

No. 01–7524. DAUGHERTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 513.

No. 01–7527. ACEVES-TELLO *v.* UNITED STATES; GARCIA-MARISCAL, AKA ANTONIO GARCIA *v.* UNITED STATES; ENRIQUEZ-VILLA, AKA ENRIQUEZ *v.* UNITED STATES; GARCIA-PARRA *v.* UNITED STATES; MARTINEZ-ARROYO, AKA MARTINEZ *v.* UNITED STATES; PIEDRA-OJEDA *v.* UNITED STATES; SALINAS-CANO *v.* UNITED STATES; and URBINA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1102 (fifth and eighth judgments) and 1103 (first, second, third, fourth, sixth, and seventh judgments).

No. 01–7530. QUINTERO-HERRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 42.

No. 01–7531. MERCER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 415.

No. 01–7532. MCDANNIEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 722.

No. 01–7535. CHHIEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 266 F. 3d 1.

No. 01–7536. DUKES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 255 F. 3d 912.

No. 01–7537. HAS NO HORSES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 261 F. 3d 744.

No. 01–7539. DOUGLAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 932.

No. 01–7543. CHAVEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 267 F. 3d 76.

No. 01–7546. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7549. KARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1098.

No. 01–7550. LAWRENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 398.

No. 01–7551. JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 F. 3d 1120.

No. 01–7552. MCBRIDE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 785.

No. 01–7553. OWENS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 785.

No. 01–7555. SPRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–7559. SMALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 13 Fed. Appx. 148.

No. 01–7560. JONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7561. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 765.

No. 01–7562. JIMENEZ-JAUREGUI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 662.

No. 01–7563. LASTER ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 258 F. 3d 525.

No. 01–7564. LUNDGREN *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–7565. LOGAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 257 F. 3d 908.

No. 01–7566. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–7569. HAWLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 43.

No. 01–7570. HAYDEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 260 F. 3d 1062.

No. 01–7577. JONES *v.* HEDRICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–7578. ROBERTSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 273.

No. 01–7580. OAKMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 256.

No. 01–7583. WARNER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 21 Fed. Appx. 43.

No. 01–7584. VENEGAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1108.

No. 01–7585. WEAVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 267 F. 3d 231.

No. 01–7586. DEL TORO, AKA FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1120.

No. 01–7587. WAYT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 880.

No. 01–7592. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 221.

No. 01–7594. CORDERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 191.

No. 01–7599. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 345.

No. 01–7601. THOMAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 01–7604. SON VAN LY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 652.

No. 01–7605. MARSCHINKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 43.

No. 01–7607. MALDONADO *v.* ANDREWS. C. A. 7th Cir. Certiorari denied.

No. 01–7608. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–7611. DURAN-LARA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 64.

No. 01–7615. LIEFERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 663.

No. 01–7616. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 115.

No. 01–7618. CREWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 196.

No. 01–7620. COGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 164.

No. 01–7622. REGASSA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 794 A. 2d 57.

No. 01–7624. TISDALE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 248 F. 3d 964.

No. 01–7628. COLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 01–7638. NELSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 01–7639. JONES *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 01–7640. BLACK *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 50 S. W. 3d 778.

No. 01–7641. BOGARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7642. ARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7643. ALLEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 341.

No. 01–7646. ALEXANDRINI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 20 Fed. Appx. 24.

No. 01–7650. SADLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 82.

No. 01–7654. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1095.

No. 01–7664. MONTES-LIRA, AKA LIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7666. SORTO-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7668. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 260 F. 3d 855.

No. 01–7672. BYRD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 79.

No. 01–7673. BUGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7675. BORCHERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 471.

No. 01–7679. BERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7684. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 397.

No. 01–7691. TURCIOS-OLIVA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7708. TAYLOR *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 995 S. W. 2d 279.

No. 01–7737. GALVAN-AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1098.

No. 01–7740. GUZMAN-JIMENEZ *v.* UNITED STATES; RAMOS-FLORES *v.* UNITED STATES; and GUERRERO-SUAREZ, AKA JIMINEZ ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1099 (first judgment) and 1100 (second and third judgments).

No. 01–7744. WATTLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7762. CORPUS-DE LA RIVA *v.* UNITED STATES; MARTINEZ-ZAVALA *v.* UNITED STATES; and BARRIOS-RAMOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101 (third judgment) and 1102 (first and second judgments).

No. 01–7765. HOLMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7780. CLEMENTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 22 Fed. Appx. 85.

No. 01–7796. ZAPATA-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1100.

No. 01–7805. WALKER *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 01–7811. OLIVARES-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 393.

No. 01–7828. SOLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 398.

No. 01–7832. CRISANTE-SALAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1064.

No. 01–7833. CASTRO-BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7838. SAUCEDO-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1103.

No. 01–7851. VASQUEZ-RESENDIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7854. LINTON *v.* WALKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 381.

No. 01–7855. HOOKS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 353 N. C. 629, 548 S. E. 2d 501.

No. 01–7897. PEEPLES *v.* MITCHELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 01–782. YANCEY *v.* HARRIS. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 16 Fed. Appx. 673.

No. 01–874. BIBBY *v.* PHILADELPHIA COCA-COLA BOTTLING CO. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 260 F. 3d 257.

No. 01–792. SCHEVE ET AL. *v.* MOODY FOUNDATION. C. A. 5th Cir. Motion of respondent for award of costs and attorney's fees denied. Certiorari denied. Reported below: 264 F. 3d 1141.

No. 01–824. TAMKO ROOFING PRODUCTS, INC. *v.* UNITED STEELWORKERS OF AMERICA, LOCAL 1071L. C. A. 11th Cir. Motion of Center on National Labor Policy, Inc., et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 265 F. 3d 1064.

No. 01–844. JACKSON *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 20 Fed. Appx. 614.

No. 01–866. TIME WARNER ENTERTAINMENT CO., L. P., DBA TIME WARNER CABLE *v.* NATIONAL SATELLITE SPORTS, INC. C. A. 6th Cir. Motion of National Cable & Telecommunications Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 253 F. 3d 900.

No. 01–7322. ROBINSON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Bladen County, N. C. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 01–7369. DOUGLAS *v.* DOUGLAS. Sup. Ct. N. H. Certiorari denied. JUSTICE SOUTER took no part in the consideration or decision of this petition.

Rehearing Denied

No. 00–1830. DENNIS *v.* UNITED STATES, *ante*, p. 821;

No. 00–1835. ADJIRI *v.* EMORY UNIVERSITY, *ante*, p. 822;

No. 00–1944. FURBY *v.* CHRYSLER CORP., *ante*, p. 828;

No. 00–8073. ADAMS *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., 532 U. S. 1023;

No. 00–8635. PAUL *v.* UNITED STATES, *ante*, p. 829;

No. 00–8719. ORLANDO *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 829;

No. 00–9165. IN RE NEUFVILLE, *ante*, p. 829;

No. 00–9784. JORDAN *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 833;

No. 00–9885. HAMMOUDAH *v.* RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER ET AL., *ante*, p. 836;

No. 00–9960. JONES *v.* GEORGIA, *ante*, p. 839;

No. 00–10095. CLAY *v.* JACKSON, SHERIFF, WILKINSON COUNTY, ET AL., *ante*, p. 842;

No. 00–10178. IN RE ABBEY, *ante*, p. 812;

No. 00–10346. CAMPBELL *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 852;

No. 00–10349. DOUGLAS *v.* CATERPILLAR, INC., ET AL. (two judgments), *ante*, p. 853;

No. 00–10361. BROWN *v.* CONROY, WARDEN, ET AL., *ante*, p. 853;

No. 00–10390. IN RE ROBINSON, *ante*, p. 811;

No. 00–10406. MEADE *v.* PENNSYLVANIA, *ante*, p. 856;

No. 00–10419. VERMILLION *v.* ANDERSON, SUPERINTENDENT, INDIANA STATE PRISON, *ante*, p. 857;

No. 00–10501. TIDIK *v.* MICHIGAN COURT OF APPEALS JUDGES, *ante*, p. 862;

No. 00–10520. KREUTZER *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 863;

No. 00–10525. BOTHWELL *v.* GENERAL MOTORS CORP. ET AL., *ante*, p. 863;

No. 00–10541. RAY *v.* JOHNSON ET AL., *ante*, p. 864;

No. 00–10591. IN RE DORE, *ante*, p. 812;

No. 00–10693. MITCHELL *v.* GARRETT ET AL., *ante*, p. 873;

No. 00–10715. NORTH *v.* UNITED STATES, *ante*, p. 874;

No. 00–10727. BELL *v.* ANDERSON, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL., *ante*, p. 875;

No. 00–10778. JARAMILLO *v.* UNITED STATES, *ante*, p. 878;

No. 00–10790. NEUHAUSSER *v.* UNITED STATES, *ante*, p. 879;

No. 00–10820. WILKS *v.* MCCAUGHTRY, WARDEN, *ante*, p. 881;

No. 01–40. COLWELL *v.* GEORGIA, *ante*, p. 972;

No. 01–62. COX ET AL. *v.* CITY OF WICHITA FALLS ET AL., *ante*, p. 972;

No. 01–124. SAWYER *v.* VIRGINIA STATE BAR, *ante*, p. 891;

No. 01–137. DIX *v.* UNITED AIRLINES, INC., *ante*, p. 892;

No. 01–429. TULLIS ET UX. *v.* LEE, SMART, COOK, MARTIN & PATTERSON P. S., INC., ET AL., *ante*, p. 1020;

No. 01–431. DALE M., BY HIS MOTHER AND NEXT FRIEND, ALICE M. *v.* BOARD OF EDUCATION OF BRADLEY-BOURBONNAIS HIGH SCHOOL DISTRICT No. 307 ET AL., *ante*, p. 1020;

No. 01–466. GARCIA *v.* EATON RAPIDS BOARD OF EDUCATION, *ante*, p. 997;

No. 01–472. FOXX *v.* DEPARTMENT OF THE NAVY ET AL., *ante*, p. 997;

No. 01–522. ZELLWEGER ET UX. *v.* CITY OF ALLIANCE, *ante*, p. 1041;

No. 01–579. HAGAN *v.* UNITED STATES, *ante*, p. 1022;

No. 01–587. LEMAIRE ET AL. *v.* DANOS & CUROLE MARINE CONTRACTORS, INC., *ante*, p. 1079;

No. 01–604. WILBURN *v.* KAISER FOUNDATION MEDICAL GROUP ET AL., *ante*, p. 1066;

No. 01–703. COMINSKY *v.* MALNER ET AL., *ante*, p. 1083;

No. 01–5026. VIZZINI *v.* MARYLAND, *ante*, p. 898;

No. 01–5055. IN RE NEUFVILLE, *ante*, p. 811;

No. 01–5089. ROSENBERG *v.* CITY OF KALAMAZOO, *ante*, p. 902;

No. 01–5091. BLACKWELL *v.* LAMARQUE, WARDEN, *ante*, p. 902;

No. 01–5107. PRICE *v.* UNITED STATES ET AL., *ante*, p. 903;

No. 01–5227. WALKER *v.* MORRISON, WARDEN, *ante*, p. 909;

No. 01–5253. ROSS *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 911;

No. 01–5383. GERA *v.* HASSENFELD ET AL., *ante*, p. 919;

No. 01–5459. SIMMONS *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 924;

No. 01–5515. NDONG-NTOUTOUM *v.* UNITED STATES, *ante*, p. 927;

No. 01–5534. DANIELS *v.* UNITED STATES, *ante*, p. 928;

No. 01–5549. VASQUEZ *v.* UNITED STATES, *ante*, p. 998;

No. 01–5552. CRIPPS *v.* HAVILAND, WARDEN, *ante*, p. 928;

No. 01–5571. DAVIS *v.* KING ET AL., *ante*, p. 957;

No. 01–5611. CHACKO *v.* UNITED STATES, *ante*, p. 930;

No. 01–5672. SAMUEL *v.* UNITED STATES, *ante*, p. 932;

No. 01–5696. KENNEDY, AKA KORNEGAY *v.* UNITED STATES, *ante*, p. 933;

No. 01–5737. BOWMAN *v.* MOORE, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 962;

No. 01–5755. IN RE DEVAUGHN, *ante*, p. 811;

No. 01–5843. DAVIDSON *v.* AMSOUTH BANK, *ante*, p. 963;

No. 01–5864. SANCHEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 976;

No. 01–5887. COLEMAN *v.* INDIANA, *ante*, p. 1057;

No. 01–5889. GLADSTONE *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC., *ante*, p. 998;

No. 01–5939. BISHOP *v.* COLORADO ET AL., *ante*, p. 1000;

No. 01–5949. BURNS *v.* VIRGINIA, *ante*, p. 1043;

No. 01–6051. SCHIEBLE *v.* SOUTH CAROLINA ET AL., *ante*, p. 1001;

No. 01–6111. PROCTOR *v.* GALAZA, WARDEN, *ante*, p. 1003;

No. 01–6132. FARRIS *v.* NATIONSBANC MORTGAGE CORP. ET AL., *ante*, p. 1024;

No. 01–6265. VOGLIOTTI *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS, *ante*, p. 1027;

No. 01–6328. ELDER *v.* TYSON FOODS, INC., ET AL., *ante*, p. 1044;

No. 01–6334. HILL *v.* ADMINISTRATIVE HEARING OFFICER FOR THE CHILD SUPPORT ENFORCEMENT AGENCY OF CUYAHOGA COUNTY ET AL., *ante*, p. 1044;

No. 01–6355. BOYD *v.* UNITED STATES, *ante*, p. 1006;

No. 01–6486. BASILE *v.* LUEBBERS, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 1029;

No. 01–6499. TOKAR *v.* MISSOURI, *ante*, p. 1029;

No. 01–6529. JACKSON *v.* UNITED STATES, *ante*, p. 1012;

No. 01–6551. PARKER *v.* OKLAHOMA, *ante*, p. 1048;

No. 01–6562. SINGLETON *v.* CAIN, WARDEN, ET AL., *ante*, p. 1057;

No. 01–6573. ODRICK *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1057;

No. 01–6585. TANH HUU LAM *v.* UNITED STATES, *ante*, p. 1013;

No. 01–6624. MALONEY *v.* KING, *ante*, p. 1059;

No. 01–6626. MCCLAIN *v.* UNITED STATES, *ante*, p. 1030;

No. 01–6684. BURRISS *v.* SMALL, WARDEN, *ante*, p. 1061;

No. 01–6697. DAVIS *v.* VARNER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL., *ante*, p. 1061;

No. 01–6742. BURKLEY *v.* MCGRATH, WARDEN, *ante*, p. 1069; and

No. 01–6786. PEALOCK, AKA CORN *v.* UNITED STATES, *ante*, p. 1035. Petitions for rehearing denied.

FEBRUARY 25, 2002

Certiorari Granted—Vacated and Remanded

No. 00–725. ALOE ENERGY CORP. *v.* BARNHART, COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari granted,

judgment vacated, and case remanded for further consideration in light of *Barnhart* v. *Sigmon Coal Co.*, *ante*, p. 438. Reported below: 225 F. 3d 648.

No. 00–9046. MARTINELLI *v.* MINNESOTA. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Kansas* v. *Crane*, *ante*, p. 407.

Certiorari Dismissed

No. 01–7470. SNAVELY *v.* OXFORD GLOBAL RESOURCES. C. A. 1st Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 00–10666. HARRIS *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1064.] Motion for appointment of counsel granted, and it is ordered that William C. Ingram, Esq., of Greensboro, N. C., be appointed to serve as counsel for petitioner in this case.

No. 00–10747. CHURCH *v.* VIRGINIA. Sup. Ct. Va. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 00–10748. IN RE CHURCH. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 00–10761. IN RE CHURCH. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 00–10810. IN RE BRAUN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 812] denied.

No. 01–618. ELDRED ET AL. *v.* ASHCROFT, ATTORNEY GENERAL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1126.] Order granting petition for writ of certiorari amended to read as follows: Certiorari granted limited to Questions 1 and 2 presented by the petition.

No. 01–7469. IN RE SWOPE. Ct. App. Ind. Petition for writ of common-law certiorari denied. Reported below: 717 N. E. 2d 204.

No. 01–8014. IN RE STRONG;
No. 01–8094. IN RE LOGAN; and
No. 01–8114. IN RE WAGENER. Petitions for writs of habeas corpus denied.

No. 01–953. IN RE HARDIN; and
No. 01–7423. IN RE SCHERER. Petitions for writs of mandamus denied.

No. 01–7896. IN RE GRIFFIN. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 01–800. HOWSAM, INDIVIDUALLY AND AS TRUSTEE FOR THE E. RICHARD HOWSAM, JR., IRREVOCABLE LIFE INSURANCE TRUST DATED MAY 14, 1982 *v.* DEAN WITTER REYNOLDS, INC. C. A. 10th Cir. Certiorari granted. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 261 F. 3d 956.

Certiorari Denied. (See also No. 01–7469, *supra.*)

No. 01–838. REYNOLDS ET AL. *v.* ROBERTS, DIRECTOR, ALABAMA DEPARTMENT OF TRANSPORTATION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 251 F. 3d 1350.

No. 01–853. GRIFFITH *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 340 N. J. Super. 596, 775 A. 2d 54.

No. 01–857. WHITE *v.* ORMET PRIMARY ALUMINUM CORP. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1095.

No. 01–902. CITY OF TAMPA *v.* VOYEUR DORM, L. C., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 265 F. 3d 1232.

No. 01–903. WESTON *v.* AMERIBANK. C. A. 6th Cir. Certiorari denied. Reported below: 265 F. 3d 366.

No. 01–915. OKLAHOMA EX REL. BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA ET AL. *v.* CORNFORTH. C. A. 10th Cir. Certiorari denied. Reported below: 263 F. 3d 1129.

No. 01–920. LAW, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF LAW *v.* CAMP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 15 Fed. Appx. 24.

No. 01–921. ROSS *v.* HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 266 F. 3d 236.

No. 01–927. CABAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 318 Ill. App. 3d 1082, 743 N. E. 2d 600.

No. 01–943. ELLWOOD CITY FORGE CO. ET AL. *v.* BOHLER-UDDEHOLM AMERICA, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 247 F. 3d 79.

No. 01–952. HALLMAN, NEXT FRIEND WITH GENERAL POWER OF ATTORNEY FOR WALTERS *v.* PRESLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 268 F. 3d 1063.

No. 01–966. O'BANNON, GOVERNOR OF INDIANA *v.* INDIANA CIVIL LIBERTIES UNION ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 259 F. 3d 766.

No. 01–967. PEREZ MENCHACA, AKA PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 53.

No. 01–982. MARSHALL *v.* DELTA FAMILY CARE DISABILITY AND SURVIVORSHIP PLAN. C. A. 8th Cir. Certiorari denied. Reported below: 258 F. 3d 834.

No. 01–989. SNEED *v.* DEPARTMENT OF LABOR, OFFICE OF WORKER COMPENSATION PROGRAMS. C. A. 6th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 343.

No. 01–1025. PARENTS AGAINST TESTING BEFORE TEACHING ET AL. *v.* ORLEANS PARISH SCHOOL BOARD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1107.

No. 01–1043. OTTE *v.* LIVINGSTON, AS ATTORNEY IN FACT AND NEXT FRIEND OF LIVINGSTON, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 396.

No. 01–1070. HART *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 275 F. 3d 35.

No. 01–1077. EVERETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 336.

No. 01–1088. TOLAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 268 F. 3d 530.

No. 01–1098. CHAMBERLIN ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 14 Fed. Appx. 69.

No. 01–1108. KRILICH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 257 F. 3d 689.

No. 01–7128. STYRON *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 262 F. 3d 438.

No. 01–7154. NARANJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 259 F. 3d 379.

No. 01–7395. MILES *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 365 Md. 488, 781 A. 2d 787.

No. 01–7408. MARTINEZ *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 255 F. 3d 229.

No. 01–7411. BRANNEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 274 Ga. 454, 553 S. E. 2d 813.

No. 01–7416. SLAGOSKI *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 244 Wis. 2d 49, 629 N. W. 2d 50.

No. 01–7417. SOLANO *v.* TAYLOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 660.

No. 01–7421. OW-TAYLOR *v.* OVERSEAS PRIVATE INVESTMENT CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 8 Fed. Appx. 957.

No. 01–7427. PREVATTE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 01–7428. PINA *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 01–7430. BROWN *v.* LINDSEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 764.

No. 01–7448. EWART *v.* LUND, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 01–7454. ROGERS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 01–7455. BROYLES *v.* ILLINOIS; and
No. 01–7457. BIBBS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 01–7456. HOANG VIET HUU NGUYEN *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 01–7458. TIGNER *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 264 F. 3d 521.

No. 01–7460. TARIN *v.* LEMASTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 900.

No. 01–7461. WILLIAMS *v.* FULTON COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES. Ct. App. Ga. Certiorari denied. Reported below: 247 Ga. App. XXIV.

No. 01–7462. VIDAL *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 01–7463. BEN-YISRAYL, FKA DAVIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 738 N. E. 2d 253.

No. 01–7474. SCHELL *v.* RICHARDS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 915.

No. 01–7479. TILLIS *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 01–7483. LAFONT *v.* CALIFORNIA. App. Div., Super. Ct. Cal., Yolo County. Certiorari denied.

No. 01–7487. CHAMBERS *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 264 F. 3d 732.

No. 01–7494. SCERAVINO *v.* ASHCROFT, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 8 Fed. Appx. 87.

No. 01–7517. TUCKER *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–7595. DOLENZ *v.* MORRISON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 01–7596. DOLENZ *v.* HAWK SAWYER, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 01–7597. ROBERTS *v.* DEPARTMENT OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 42.

No. 01–7619. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 815.

No. 01–7669. LIPMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–7670. ALEJO-HERNANDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 149.

No. 01–7671. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 336.

No. 01–7674. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 201.

No. 01–7683. STEDEFORD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 01–7686. AGUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7690. MCNEIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 706.

No. 01–7698. VASQUEZ-FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 265 F. 3d 1122.

No. 01–7699. WATSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 01–7701. TRIBBLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 01–7702. TROTTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 270 F. 3d 1150.

No. 01–7705. MCDUFFIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 181.

No. 01–7706. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 56.

No. 01–7707. ZHARN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 8 Fed. Appx. 465.

No. 01–7710. JOHNSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 277 F. 3d 1374.

No. 01–7711. LEMAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 260 F. 3d 1018.

No. 01–7716. MURPHY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 545.

No. 01–7717. SUMMERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 268 F. 3d 683.

No. 01–7719. GONZALO SUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 56.

No. 01–7720. RUELAS-ARREGUIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 632.

No. 01–7721. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 1270.

No. 01–7722. SULLIVAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 255 F. 3d 1256.

No. 01–7725. UBALDO-HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 271 F. 3d 78.

No. 01–7726. RAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 340.

No. 01–7727. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7728. JONASSAINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 709.

No. 01–7730. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 15 Fed. Appx. 87.

No. 01–7731. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 433.

No. 01–7732. CUMMINGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 135.

No. 01–7735. HOWARD *v.* LITSCHER, SECRETARY, WISCONSIN DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 01–7742. PAREDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7745. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7753. BAGGETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 251 F. 3d 1087.

No. 01–7754. BARRERA-ANICA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 265 F. 3d 1057.

No. 01–7755. ADKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 494.

No. 01–7759. CASTRO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 258 F. 3d 1057.

No. 01–7761. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 122.

No. 01–7763. CUNNINGHAM *v.* SCIBANA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 259 F. 3d 303.

No. 01–7781. CADERNO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 256 F. 3d 1213.

No. 01–7782. LEATH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 14 Fed. Appx. 240.

No. 01–7783. LAWSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 205.

No. 01–7786. MEYST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 112.

No. 01–7787. OVALLE-JIMENEZ, AKA OVALLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 21 Fed. Appx. 65.

No. 01–7790. MORENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–7792. APONTE-BURGOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 52.

No. 01–7793. MAGGARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7795. MANN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 217 F. 3d 841.

No. 01–7797. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 93.

No. 01–7802. DUPAW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7808. YEPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 273 F. 3d 1119.

No. 01–7809. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 62.

No. 01–7812. TYLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 113.

No. 01–7816. MUELLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 444.

No. 01–7817. PARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7819. JESSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7821. KOEHLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 266 F. 3d 937.

No. 01–7826. MCLEMORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 24 Fed. Appx. 404.

No. 01–7827. DIAZ TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7829. REED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 272 F. 3d 950.

No. 01–7830. DEPAZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 423.

No. 01–7834. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 268 F. 3d 599.

No. 01–7839. RAMON RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 01–7840. WILLIAMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 55 M. J. 302.

No. 01–7841. WARDLOW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1144.

No. 01–7846. GARCIA MADRIGAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1101.

No. 01–7847. BATES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 359.

No. 01–7849. MCDANIEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 01–7850. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 56.

No. 01–7856. GARRIDO-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 16 Fed. Appx. 630.

No. 01–7857. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7861. FRIEND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–7862. HERNANDEZ-OLIVARES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 807.

No. 01–7863. FALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 256 F. 3d 1082.

No. 01–7864. PAYTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 260 F. 3d 898.

No. 01–7871. GARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 19 Fed. Appx. 141.

No. 01–7872. HILL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 21 Fed. Appx. 18.

No. 01–7873. SOTOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 01–7874. GREENE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 708.

No. 01–7876. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 167.

No. 01–7880. ARDLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 268 F. 3d 1066.

No. 01–7883. DELK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1098.

No. 01–7884. DAMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 198.

No. 01–7886. ALGEA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 25 Fed. Appx. 14.

No. 01–7887. ARGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 23 Fed. Appx. 302.

No. 01–7888. STIGER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 20 Fed. Appx. 307.

No. 01–7890. QUEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 10 Fed. Appx. 143.

No. 01–7898. PIERRE, AKA JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 51.

No. 01–7899. GADSON, AKA STEVENSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 27 Fed. Appx. 150.

No. 01–7901. HOLLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7904. GOMEZ-SOTELO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 18 Fed. Appx. 690.

No. 01–7905. SALGADO PACHECO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1108.

No. 01–7907. GUZMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7908. FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 263 F. 3d 169.

No. 01–7914. AGUILAR-AVELLANEDA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7919. ANDREW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7928. NEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 17 Fed. Appx. 214.

No. 01–7931. HORTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 43.

No. 01–7932. MEGGS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 275 F. 3d 57.

No. 01–7935. BURTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 259 F. 3d 503.

No. 01–7936. BUSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 264 F. 3d 1146.

No. 01–7938. SHUFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 253 F. 3d 710.

No. 01–7944. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7947. DURKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 273 F. 3d 1094.

No. 01–7958. MAGGARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 01–7962. LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 01–7963. TRUJILLO-PEREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 11 Fed. Appx. 688.

No. 01–7972. MORALES-SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 01–7994. ZUNIGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 275 F. 3d 1079.

No. 01–7998. GONZALEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 21 Fed. Appx. 393.

No. 01–8049. AYALA *v.* DEWITT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 26 Fed. Appx. 379.

No. 01–846. COOK ET VIR *v.* HUGHES TRAINING, INC., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 254 F. 3d 588.

No. 01–847. APOTEX USA, INC. *v.* MERCK & CO., INC. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 254 F. 3d 1031.

No. 01–7401. HOUSEL *v.* HEAD, WARDEN. C. A. 11th Cir. Motion of Parliamentary Supporters of Tracy Housel et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 238 F. 3d 1289 and 246 F. 3d 1326.

Rehearing Denied

No. 00–10037. NARY *v.* HENNESSEY, SHERIFF, *ante*, p. 840;

No. 00–10250. KINCAID *v.* COUNTY OF SACRAMENTO ET AL., *ante*, p. 945;

No. 00–10662. FERQUERON *v.* MICHIGAN, *ante*, p. 871;

No. 00–10882. BROADEN *v.* LOUISIANA, *ante*, p. 884;

No. 01–510. UNITED STATES EX REL. GARIBALDI ET AL. *v.* ORLEANS PARISH SCHOOL BOARD, *ante*, p. 1078;

No. 01–610. ALI *v.* HOFBAUER, WARDEN, *ante*, p. 1067;

No. 01–826. IN RE VEY, *ante*, p. 1077;

No. 01–5147. UGOCHUKWU *v.* UNITED STATES, *ante*, p. 905;

No. 01–5182. KLEIN *v.* EDWARDS, WARDEN, *ante*, p. 907;

No. 01–5328. PARKER *v.* HOLT, WARDEN, *ante*, p. 1023;

No. 01–5573. MCBRIDE *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 958;

No. 01–6308. WILLIAMS *v.* TYSZKIEWICZ, WARDEN, *ante*, p. 1027;

No. 01–6634. HERRON *v.* SCHRIRO, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1059;

No. 01–6776. LAYTON *v.* GENERAL MOTORS CORP. ET AL., *ante*, p. 1069; and

No. 01–6808. MILLER *v.* UNITED STATES, *ante*, p. 1035. Petitions for rehearing denied.

FEBRUARY 28, 2002

Miscellaneous Order

No. 01A665. DELK *v.* COCKRELL, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

MARCH 1, 2002

Miscellaneous Order

No. 01A649. BRANCH ET AL. *v.* SMITH ET AL. Application for stay and injunction, addressed to JUSTICE SOUTER and referred to the Court, denied.

REPORTER'S NOTE

The next page is purposely numbered 1301. The numbers between 1173 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

BAGLEY, WARDEN *v.* BYRD

ON APPLICATION FOR STAY

No. 01A375. Decided November 6, 2001

Applicant warden's request for a stay of District Court proceedings pending the disposition of her certiorari petition is denied. After that court and a Sixth Circuit panel denied respondent, an Ohio death-row inmate, relief on his second federal habeas petition, the en banc Sixth Circuit remanded the case for the District Court to develop a factual record sufficient to permit *sua sponte* consideration of a request for leave to file a second habeas petition supported by actual innocence allegations. Applicant argues that the Sixth Circuit's procedures are highly irregular, but she fails to demonstrate either that the District Court's hearing will cause irreparable harm to the State or that it will affect this Court's jurisdiction to act on her certiorari petition.

JUSTICE STEVENS, Circuit Justice.

Respondent, John W. Byrd, Jr., is an Ohio death-row inmate who has exhausted his state-court remedies and who was denied relief in his first federal habeas corpus proceeding. His application to file a second petition for a federal writ, which is supported by his allegations of actual innocence, has been denied by the District Court and a panel of the Court of Appeals for the Sixth Circuit. However, on October 9, 2001, a majority of the active judges of the Court of Appeals entered an order remanding the case to the District Court "for the development of a factual record sufficient to permit *sua sponte* consideration of a request for leave to file a second petition for a writ of habeas corpus." *In re Byrd*, 269 F. 3d 585, 608 (CA6 2001). The order cites cases decided by the Second and Eighth Circuits, *Triestman* v. *United States*, 124 F. 3d 361, 367 (CA2 1997); *Krimmel* v.

Hopkins, 56 F. 3d 873, 874 (CA8 1995), as "[t]he jurisdictional basis for a rehearing *sua sponte*." 269 F. 3d, at 608.

Applicant, Margaret Bagley, has filed with the Clerk of the Court a petition for certiorari questioning the jurisdiction of the en banc court to enter the remand order, and has made an application to me as Circuit Justice for a stay of the District Court proceedings pending disposition of her certiorari petition. In addition, she filed a similar stay application with the Court of Appeals, which that court has denied. While expressing confidence that the District Court will find Byrd's claim of actual innocence lacking in credibility, she argues that the procedures followed and authorized by the Court of Appeals are highly irregular. She fails, however, to demonstrate either that the hearing will cause any irreparable harm to the State of Ohio or that it will affect this Court's jurisdiction to act on her certiorari petition. See *Rubin* v. *United States*, 524 U. S. 1301 (1998) (REHNQUIST, C. J., in chambers) ("An applicant for stay first must show irreparable harm if a stay is denied"); 28 U. S. C. § 1651(a) (1994 ed.) (a stay is warranted only when "necessary or appropriate in aid of [our] jurisdictio[n]").

Because I have been advised that the hearing before the District Court has already commenced, I have decided to act on the stay application without calling for a response from the respondent. The failure to allege irreparable harm, coupled with the fact that there is no need to enter an extraordinary writ to preserve this Court's jurisdiction, persuade me that the stay application should be denied.

It is so ordered.

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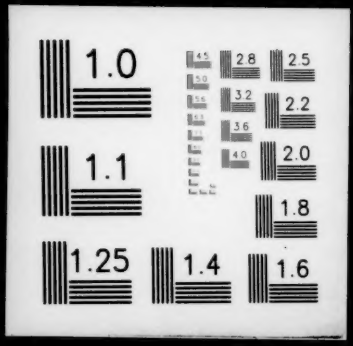
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